

(23,772)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 621.

WASHINGTON-VIRGINIA RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

REAL ESTATE TRUST COMPANY OF PHILADELPHIA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 June Session, 1912.

1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY.

Assumpsit.

Joseph De F. Junkin, John G. Johnson.

1912, July 5. Praecept for Summons filed.
Summons exit returnable the first Monday of August next.
Statement of Claim filed.
Rule to file an affidavit of defense filed.

6. Proof of service of statement of claim and rule to file an affidavit of defense filed.

19. Motion for rule on plaintiff to show cause why service of writ should not be vacated filed.
Order granting rule on plaintiff to show cause why writ should not be vacated filed. Returnable August 3, 1912—All proceedings to stay.

22. Marshal's return of "served" of order granting rule to vacate writ filed.

August 5. Summons returned "served" and filed.

1913, March 31. Testimony on behalf of plaintiff and defendant filed.

April 4. Printed record sur rule to vacate service of writ filed.

May 2. Order granting leave to amend statement of claim filed.
8. Opinion, Thompson, J., discharging rule to vacate service of writ filed.
19. Order granting exception to order discharging rule to vacate service of writ, granting leave to file Bill of Exceptions and directing defendant to file affidavit of defense within ten days filed.

27. Order granting judgment for want of an affidavit of defense filed. Judgment accordingly.
Bill of Exceptions filed.
Assignment of Errors filed.
Petition for writ of error filed.

2 1913, May 27. Order allowing writ of error filed.
Certificate of Judge as to question of jurisdiction filed.

Bond sur writ of error in sum of \$176,200 and order of approval filed.

Writ of Error to U. S. Supreme Court allowed and copy thereof lodged in Clerk's office for adverse party.

Citation allowed and issued.

June 4. Praeclipe for transcript of record sur writ of error filed.

Citation returned "service accepted" and filed.

3 UNITED STATES OF AMERICA, &c.:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you between Real Estate Trust Company of Philadelphia, Plaintiff, and Washington-Virginia Railway Company, Defendant, a manifest error hath happened, to the great damage of the said Washington-Virginia Railway Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington within thirty days, in the said Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 27th day of May, in the year of our Lord one thousand nine hundred and thirteen.

[Seal of the District Court of the United States, E. D. Penna.]

GEORGE BRODBECK,
Deputy Clerk of the District Court
of the United States.

Allowed by—

J. W. THOMPSON,
District Judge.

4 UNITED STATES OF AMERICA, *ss.*:

The President of the United States to Real Estate Trust Company of Philadelphia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington within thirty days, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, Eastern District of Pennsylvania, wherein, Washington-Virginia Railway Company is plaintiff in error and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff-in-error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the partie in that behalf.

Witness the Honorable J. Whitaker Thompson, Judge of the District Court of the United States, this 26th day of May, in the year of our Lord one thousand nine hundred and thirteen.

[SEAL.]

J. W. THOMPSON,
District Judge.

Service accepted.

JOSEPH DE F. JUNKIN,
JOHN G. JOHNSON,
Attorneys for Defendant-in-Error.

5 In the District Court of the United States for the Eastern District of Pennsylvania, June Term, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY.

Præcipe for Summons Assumpsit.

(Filed July 5, 1912.)

Please issue Summons in Assumpsit as above; returnable the first Monday of August, 1912.

JOSEPH DE F. JUNKIN,
JOHN G. JOHNSON,
Attorneys for the Real Estate Trust Company of Philadelphia, Plaintiff.

To the Clerk of the United States District Court, Eastern District of Pennsylvania.

The President of the United States to the Marshal of the Eastern District of Pennsylvania, Greeting:

We Command You, That you summon Washington-Virginia Railway Company, late of your District, if it may be found therein, so that it be and appear before the Judges of the District Court of the United States, for the Eastern District of Pennsylvania, at a session of the same Court to be holden at Philadelphia, on the 1st Monday of August next, to answer to The Real Estate Trust Company of Philadelphia of a plea in Assumpsit, &c. And have you then and there this writ.

Witness the Honorable the Judges of the said Court at Philadelphia, this 5th day of July A. D. 1912, and in the one hundred and thirty-seventh year of the Independence of the United States.

[SEAL.]

LEO A. LILLY,
Deputy Clerk District Court.

[Endorsed:] No. 1980, June Sessions, 1912. U. S. District Court. The Real Estate Trust Company of Philadelphia vs. Washington-Virginia Railway Company. Summons. Assumpsit. Returnable on the 1st Monday of August next. Filed Aug. 5, 1912. Wm. W. Craig, Clerk, By L., Deputy Clerk. Joseph De F. Junkin, John G. Johnson, Attorneys for Plaintiff.

JULY 5TH, 1912.

At Philadelphia in my district served the within writ on Washington-Virginia Railway Company at its office #1307 Real Estate Trust Company Building Broad & Chestnut st., City of Philadelphia by handing a true and attested copy thereof to Frederick H. Treat, President of said Company and making known the contents of the same to him.

So answers

JOHN B. ROBINSON,
U. S. Marshal,
Per ABRAM B. MYERS,
Deputy.

7 In the District Court of the United States for the Eastern District of Pennsylvania.

No. —, —— Term, 1912.

"THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA"

vs.

"WASHINGTON-VIRGINIA RAILWAY COMPANY."

Statement of Plaintiff's Claim.

(Filed July 5, 1912.)

The Plaintiff, "The Real Estate Trust Company of Philadelphia," avers and declares that the Defendant, "Washington-Virginia Railway Company," is justly indebted to it in the sum of Seventy-five Thousand Three Hundred and Sixty Dollars (\$75,360.), with interest on Forty-eight Thousand Dollars (\$48,000.) thereof from July 1, 1912, being the principal sum of the bonds hereinafter mentioned, and with interest on Twenty-seven Thousand Three Hundred and Sixty Dollars (\$27,360.) thereof, representing nineteen (19) separate sums of Fourteen Hundred and Forty Dollars (\$1,440.) per each of the coupons hereinafter mentioned from the dates of their respective maturities beginning with January 1, 1903, and maturing each six months thereafter to and including July 1, 1912, which claim is evidenced by ninety-six (96) bonds by it owned and to it belonging, executed by "The Washington, Alexandria & Mt. Vernon Electric Railway Company," under seal, dated July 1st, 1892, for Five Hundred Dollars (\$500) each, and all of the same being precisely similar in tenor excepting that the numbers upon such bonds are different, the same being numbered from 141 to 237, inclusive, together with the coupons upon each of the same, in which the numbers referring to the bonds are changed in the same way, and which coupons as such upon each bond are respectively numbered

8 from 21 to 40, inclusive, and which coupons are all due and unpaid, and respectively fell due in intervals of six months'

periods, beginning January 1, 1903, and each of which coupons bore interest from the dates of their respective maturities (a true copy of one of which bonds and coupons is hereto attached and made part hereof, marked "Exhibit A"); and all of which bonds fell due by their terms upon July 1st 1912, and were payable at the office of "The Real Estate Trust Company of Philadelphia"; and, although notice of such maturity of such bonds and of the said unpaid coupons, with the interest thereon so due and payable, was duly given to, and demand for payment duly made upon, the "Washington-Virginia Railway Company," the Defendant herein, and which Company is responsible therefor, such payment was not made by such Defendant at said time and place, and has not since been made, and the whole of the same, with the interest as aforesaid, is now due and payable to the Plaintiff.

"The Washington, Alexandria & Mt. Vernon Electric Railway Company" was duly incorporated under an Act of the General Assembly of Virginia, entitled "An Act to Incorporate the Alexandria and Fairfax Passenger Railway Company," approved February 18th, 1890. Under amendment to said Act, approved February 25th, 1892, the name of such corporation was changed to that of "The Washington, Alexandria & Mt. Vernon Electric Railway Company," which name was again subsequently changed, under an amendment to said Act, approved February 25th, 1896, to "Washington, Alexandria & Mt. Vernon Railway Company."

Under the name of "The Washington, Alexandria & Mt. Vernon Electric Railway Company", such corporation issued four hundred (400) bonds, of the denomination of Five Hundred Dollars (\$500) each, of which bond issue the bonds sued upon in the present cause are a part, and which bonds so sued upon came into the possession of the Plaintiff for value received and without notice, and are still held by it unpaid both as to the principal and as to the

9 coupons hereinbefore described, with the interest thereon.

Subsequently to the said bonds and coupons so coming into the possession of the Plaintiff, as will be seen by reference to the record of said cause in this Court, which is herewith pleaded, the "Washington, Alexandria & Mt. Vernon Railway Company" filed a Bill in Equity in the Circuit Court of the United States for the Eastern District of Pennsylvania, Third Circuit, to No. 36, of April Sessions, 1907, which was subsequently amended by it, against "The Real Estate Trust Company of Philadelphia," as Defendant, alleging, among other things, that the said "The Real Estate Trust Company of Philadelphia" was unlawfully in possession of such bonds, and claiming in substance that the same came into such possession of the Plaintiff without value, and with notice to it that the same were no longer the legal obligations of the Obligor, and with the duty imposed upon it to cancel said bonds; the said amended Bill further alleging that at various times between August 1st, 1895, and March 21st, 1905, the said "The Real Estate Trust Company of Philadelphia", by its declarations and conduct, caused the "Washington, Alexandria & Mt. Vernon Railway Company" to believe that none of the said bonds of July 1st, 1892, were outstanding, and averring that the Trust Company was estopped from claiming to hold said bonds; and praying that the said "The Real Estate Trust Company of Philadelphia" should be required to deliver the said bonds, with all the coupons appertaining thereto, to the "Washington, Alexandria & Mt. Vernon Railway Company" for cancellation.

By its Answer and amended Answer "The Real Estate Trust Company of Philadelphia" denied in terms these material allegations of the said Bill and amended Bill, and after replication filed by the Complainant, the cause at issue was tried, and a large amount of testimony was submitted on behalf of the Complainant particularly

10 addressed to the said two principal allegations of such Bill and amended Bill, disclosing in detail all of the facts relied upon by the Complainant in support of its allegations that the said Trust Company came into possession of such bonds without

value and with notice to it that the same were no longer the legal obligations of the Obligor, and with the duty imposed upon it to cancel such bonds; and particularly at length in support of the allegation that the said Trust Company had by its declarations and conduct caused the Railway Company to believe that none of the bonds of July 1st, 1892, were outstanding. Such cause was so proceeded with according to law that upon February 16th, 1910, a Decree was entered by said Court against the said "The Real Estate Trust Company of Philadelphia", as to said bonds and coupons, as follows:

"(1) That The Real Estate Trust Company of Philadelphia forthwith deliver to the Washington, Alexandria and Mt. Vernon Railway Company the ninety-six documents numbered consecutively dated July 1, 1892, and purporting to be the bonds or obligations of the said Railway Company, each in the sum of \$500 and payable July 1, 1912, and referred to in the bill of complaint, together with all the coupons pertaining to said documents, whether attached or detached in the possession of the said Trust Company."

From such Decree an Appeal was duly taken by the Defendant to the Circuit Court of Appeals for the Eastern District of Pennsylvania, Third Circuit, and upon May 16th, 1911, upon such Appeal, the following final Decree was entered by the said Circuit Court of Appeals:

"It is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby reversed as to the ninety-six (96) bonds of five hundred dollars (\$500) each, issued under the mortgage of July 1, 1892, and affirmed as to the fifty (50) bonds of one thousand dollars (\$1,000.) each, dated August 1, 1895, and held by the Trust Company as collateral. The costs in this Court to be divided; and therefore, that the said Appellant, the Real Estate Trust Company of Philadelphia, recover against the said Appellee, the Washington, Alexandria & Mt. Vernon Railway Co., the sum of One Hundred and Nine Dollars and Forty Cents, (\$109.40), one-half of its costs herein expended, and have execution therefor."

And in pursuance of which Final Decree of the Circuit Court of Appeals, the Mandate of the said Court was duly remitted to the said Circuit Court of the United States for the Eastern District of Pennsylvania directing it to carry said Final Decree into effect, and the right and title of the said "The Real Estate Trust Company of Philadelphia" to said bonds and coupons, with its right to enforce payment of the same, was thus finally adjudicated and determined in its favor.

While this litigation was thus pending, upon June 22nd, 1910, a Charter, which had been duly granted by the State Corporation Commission of the State of Virginia to the "Washington-Virginia Railway Company", was duly lodged in the office of the Secretary of the Commonwealth of the State of Virginia, and said corporation became a corporation of the said Commonwealth under the laws thereof. Such Charter was subsequently amended by amendment granted by such Commission, which was duly lodged in the office

of the Secretary of the Commonwealth of Virginia on September 9th, 1910.

By proceedings duly taken in accordance with the laws of the said Commonwealth, the said "Washington-Virginia Railway Company" and another corporation of the said Commonwealth, incorporated as "Washington, Arlington and Falls Church Railway Company" and the said "Washington, Alexandria & Mt. Vernon Railway Company" merged under the name of "Washington-Virginia Railway Company", by Articles of Merger duly entered into between the said corporations under the laws of the State of Virginia, approved by the said State Corporation Commission on October 17th, 1910, and duly lodged upon the same day in the office of the Secretary of the Commonwealth of Virginia, and under which Articles of Merger, and in accordance with the laws of the said Commonwealth, the said merged corporation, "Washington-Virginia Railway Company", became vested with all of the property of the said

12 corporations so merged, and expressly became liable for such obligations of the aforesaid "The Washington, Alexandria & Mt. Vernon Electric Railway Company", and expressly covenanted in said Articles of Merger as follows:

"And all debts, liabilities and duties of either of said corporations shall henceforth attach to said Washington-Virginia Railway Company, and be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it, all as in the case of the Statute Law of the State of Virginia provided."

(A true certified copy of such Agreement of Merger is hereto attached, marked "Exhibit A.").

Such Statute Law of the State of Virginia, as to the merging of corporations of the said Commonwealth, provides as follows, in the Code of 1887 Commonwealth of Virginia, Section 1105 E.:

"Upon the perfecting as aforesaid of the said merger of consolidation, the several corporations, parties thereto, shall be deemed and taken as one corporation upon the terms and conditions and subject to the restrictions set forth in said agreement, and all and singular the rights, privileges and franchises of each of said corporations, parties to the same, except as restricted by this Act, and all property, real and personal, and all debts due, or whatever accounts, as well as stock subscriptions and other things in action belonging to each of such corporations, shall be taken and deemed as transferred to and vested in the new corporation, without further act or deed, and all property, all rights of way, and all other interests shall be — effectually the property of the new corporation as they were of the former corporation, parties to the said agreement; Provided, however, that the rights of creditors, and all liens upon the property of either of said corporations shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence to preserve the same; all debts, liabilities and duties of either of the said Companies shall henceforth attach to the new corporation, and be enforced against it

"to the same extent as if the said debts, liabilities, duties &c., had been incurred or contracted by it."

Wherefore Plaintiff claims that the Defendant, "Washington-Virginia Railway Company", is justly indebted to it in the said sum of Eighty-three Thousand Five Hundred and Sixty-eight Dollars (\$83,568) as of July 1, 1912, for the principal of the said bonds, with the coupons thereto attached, and the interest thereon respectively as of July 1st, 1912, all of which remains due and unpaid.

Therefore it brings this its suit &c.

(Signed) JOSEPH D. F. JOHNSON,
" JOHN G. JOHNSON,

*Attorneys for the Real Estate Trust
Company of Philadelphia, Pl'tf.*

STATE OF PENNSYLVANIA,

County of Philadelphia, ss:

George H. Earle, Jr., being duly sworn, says: "I am President of 'The Real Estate Company of Philadelphia', Plaintiff above named, and the facts set forth in the foregoing Statement of Claim are true as I verily believe."

(Signed) GEORGE H. EARLE, JR.

Sworn and Subscribed to before me, this Fifth day of July, 1912.

[SEAL.] (Signed) SALOME B. WEAVER,

Commission expires February 27, 1913.

14

EXHIBIT A.

This is to certify that a duly called meeting of the stockholders of the Washington-Virginia Railway Company was held at the principal office of said Company in the town of Falls Church, Fairfax County, Virginia, at 3 o'clock P. M., on Wednesday, October 12, 1910, said meeting having been called for the purpose of taking into consideration and voting on a joint agreement entered into by the Boards of Directors of the Washington-Virginia Railway Company, the Washington, Arlington & Falls Church Railway Company, and the Washington, Alexandria & Mt. Vernon Railway Company, for the merger or consolidation of said corporations, a copy of said joint agreement being attached hereto.

This is further to certify that due notice of the time, place and general object of said meeting was given to the stockholders by publication, at least six times a week for two successive weeks, in the Alexandria Gazette, a newspaper published in the City of Alexandria, Virginia, said City being near the place where the principal office in this State of the said Corporation is located (no daily newspaper being published in the County of Fairfax, Virginia), and by mailing a copy of such notice, at least ten days prior to such meeting, to the last known post office address of each of the stockholders of record.

This is further to certify that at said meeting there were represented, either in person or by duly executed proxy, 10,000 shares of stock out of a total of 10,000 shares issued and outstanding, and that after due consideration of said joint agreement which was submitted to the stockholders a vote by ballot was taken thereon for the adoption or rejection of the same, and that a majority of all votes cast were in favor of said agreement, consolidation and merger.

15 In testimony whereof M. E. Church, the President of the said Washington-Virginia Railway Company, has hereunto subscribed his name and affixed the corporate seal of said Washington-Virginia Railway Company hereto, on the 12th day of October, 1910, and F. E. Parker, the Secretary of the said Washington-Virginia Railway Company, has duly attested the same.

[SEAL.]

M. E. CHURCH,
President of Washington-Virginia
Railway Company.

Attest:

F. E. PARKER,
Secretary of Washington-Virginia Railway Company.

STATE OF VIRGINIA,
County of Fairfax, To wit:

I, G. T. Mankin, a Notary Public in and for the State and County aforesaid, do hereby certify that M. E. Church and F. E. Parker, the President and Secretary respectively of the Washington-Virginia Railway Company, whose names are signed to the writing foregoing and hereunto annexed, bearing date on the 12th day of October, 1910, have acknowledged the same before me in my State and County aforesaid.

And I do further certify that each of them acknowledged that the seal affixed thereto is the corporate seal of the said Washington-Virginia Railway Company.

Given under my hand this 12th day of October, 1910.

My commission as Notary expires Nov. 4-1912.

G. T. MANKIN,
Notary Public.

16 This is to certify that a duly called meeting of the stockholders of the Washington, Arlington & Falls Church Railway Company was held at the principal office of said Company at Mt. Vernon, Fairfax County, Virginia, on Wednesday, October 12, 1910, at 2:30 o'clock p. m., said meeting having been called for the purpose of taking into consideration and voting on a joint agreement entered into by the Boards of Directors of the Washington-Virginia Railway Company, the Washington, Arlington & Falls Church Railway Company, and the Washington, Alexandria & Mt. Vernon Railway Company for the merger or consolidation of said corporations, a copy of said joint agreement being attached hereto.

This is further to certify that due notice of the time, place and

general object of said meeting was given said stockholders by publication, at least six times a week for two successive weeks, in the Alexandria Gazette, a newspaper published in the City of Alexandria, Virginia, said City being near the place where the principal office in this State of the said Corporation is located (no daily newspaper being published in the County of Fairfax, Virginia), and by mailing a copy of such notice at least ten days prior to such meeting, to the last known post office address of each of the stockholders of record.

This is further to certify that at said meeting there were represented either in person or by duly executed proxy 4,787 shares of stock out of a total of 5,000 shares issued and outstanding, and that after due consideration of said joint agreement which was submitted to the stockholders, a vote by ballot was taken thereon for the adoption or rejection of the same, and that a majority of all votes 16½ cast were in favor of said agreement, consolidation and merger.

In testimony whereof, Clarence P. King, the President of the said Washington, Arlington & Falls Church Railway Company, has hereunto subscribed his name and affixed the corporate seal of said Washington, Arlington & Falls Church Railway Company hereto on the 12th day of October, 1910; and John W. Rich, the Secretary of the said Washington, Arlington & Falls Church Railway Company has duly attested the same.

[SEAL.]

CLARENCE P. KING,
*President of Washington, Arlington
& Falls Church Railway Company.*

Attest:

JOHN W. RICH,
*Secretary of Washington, Arlington
& Falls Church Railway Company.*

DISTRICT OF COLUMBIA, *To wit:*

I, Albert C. Murdaugh, a Notary Public in and for the District aforesaid, do hereby certify that Clarence P. King and John W. Rich, the President and Secretary respectively of the Washington, Arlington & Falls Church Railway Company, whose names are signed to the writing foregoing and hereunto annexed, bearing date on the 12th day of October, 1910, have acknowledged the same before me in my District aforesaid.

And I do further certify that each of them acknowledged that the seal affixed thereto is the corporate seal of the said Washington, Arlington & Falls Church Railway Company.

17 Given under my hand & official seal this 12th day of October, 1910.

My commission as Notary expires June 9, 1911.

[SEAL.]

ALBERT C. MURDAUGH,
Notary Public.

This is to certify that a duly called meeting of the stockholders of the Washington, Alexandria & Mt. Vernon Railway Company was held at the principal office of said Company at Mt. Vernon,

Fairfax County, Virginia, on Wednesday, October 12th, 1910, at 2 o'clock p. m., said meeting having been called for the purpose of taking into consideration and voting on a joint agreement entered into by the Boards of Directors of the Washington-Virginia Railway Company, the Washington, Arlington & Falls Church Railway Company, and the Washington, Alexandria & Mt. Vernon Railway Company, for the merger or consolidation of said corporations, a copy of said joint agreement being attached hereto.

This is further to certify that due notice of the time, place and general object of said meeting was given said stockholders by publication, at least six times a week for two successive weeks, in the Alexandria Gazette, a newspaper published in the city of Alexandria, Virginia, said City being near the place where the principal office in this State of the said Corporation is located (no daily newspaper being published in the County of Fairfax, Virginia), and by mailing a copy of such notice at least ten days prior to such meeting, to the last known post office address of each of the stockholders of record.

18 This is further to certify that at said meeting there were represented either in person or by duly executed proxy 14,069 shares of stock out of a total of 15,000 shares issued and outstanding, and that after due consideration of said joint agreement, which was submitted to the stockholders, a vote by ballot was taken thereon for the adoption or rejection of the same, and that a majority of all votes cast were in favor of said agreement, consolidation and merger.

In testimony whereof, Clarence P. King, the President of the said Washington, Alexandria & Mt. Vernon Railway Company, has hereunto subscribed his name and affixed the corporate seal of said Washington, Alexandria & Mt. Vernon Railway Company hereto on the 14th day of October, 1910, and John W. Pittock, the Secretary of the said Washington, Alexandria & Mt. Vernon Railway Company has duly attested the same.

[SEAL.]

CLARENCE P. KING,
*President of Washington, Alexandria
& Mt. Vernon Railway Company.*

Attest:

JOHN W. PITTOCK,
*Secretary of Washington, Alexandria
& Mt. Vernon Railway Company.*

STATE OF PENNSYLVANIA,
City of Philadelphia, To wit:

I, Lillian M. Hudnut, a Notary Public in and for the State and City aforesaid, do hereby certify that Clarence P. King and John W. Pittock, the President and Secretary respectively of the 19 Washington, Alexandria & Mt. Vernon Railway Company, whose names are signed to the writing foregoing and hereunto annexed, bearing date on the 14th day of October, 1910, have acknowledged the same before me in State and City aforesaid.

And I do further certify that each of them acknowledged that the seal affixed thereto is the corporate seal of the said Washington, Alexandria & Mt. Vernon Railway Company.

Given under my hand and official seal this 15 day of October, 1910.

My commission as Notary expires on the 21 day of January, 1911.

[SEAL.]

LILLIAN M. HUDNUT,

Notary Public.

This joint agreement, made this Twenty-first day of September, A. D. nineteen hundred and ten, between the Washington-Virginia Railway Company, a corporation organized and existing under the laws of the State of Virginia, party of the first part; the Washington, Arlington & Falls Church Railway Company, a corporation organized and existing under the laws of the State of Virginia, party of the second part; and the Washington, Alexandria & Mt. Vernon Railway Company, also a corporation organized and existing under the laws of the State of Virginia, party of the third part; witnesseth that:

Whereas, the said party of the first part is a corporation duly chartered, organized and existing under and by virtue of a 20 charter granted by the State Corporation Commission of the State of Virginia, and duly lodged in the office of the Secretary of the Commonwealth of the 22nd day of June, 1910, said charter having been amended by the said State Corporation Commission and said amendment having been duly lodged in the office of the Secretary of the Commonwealth on September 9, 1910;

And whereas, the said party of the second part is a corporation duly chartered, organized and existing as the successor, under and by virtue of Sections 1233 and 1234 of the Code of Virginia (1887), to all the corporate franchises, rights and privileges of the Washington & Arlington Railway Company, within the State of Virginia, the said Washington & Arlington Railway Company being a corporation chartered by an Act of Congress, entitled "An Act to incorporate the Washington & Arlington Railway Company of the District of Columbia," approved February 28, 1891, and corrected by a joint resolution of Congress, approved March 2, 1891, and the said corporate franchises, rights and privileges within the State of Virginia being the same franchises, rights and privileges described in and granted by an Act of the General Assembly of Virginia, entitled "An Act to approve and ratify a charter of incorporation granted by the Congress of the United States, approved February 28, 1891, entitled 'An Act to Incorporate the Washington & Arlington Railway Company of the District of Columbia,' so far as it relates to its proposed railway line within the limits of the State of Virginia," approved January 26, 1892; and being also the same franchises, rights and privileges confirmed in and amended by an Act of the

21 General Assembly of Virginia, entitled "An Act to confirm the organization and corporate existence of and to grant certain powers to the Washington, Arlington & Falls Church Railway Company," approved March 4, 1896; an Act of the General Assembly of Virginia, entitled "An Act to amend and re-enact Sec-

tion 2 of an Act entitled 'An Act to confirm the organization and corporate existence of and to grant certain powers to the Washington, Arlington & Falls Church Railway Company,' approved March 4, 1896," approved December 23, 1901; and by an amendment of its charter granted by the State Corporation Commission of Virginia and duly lodged in the office of the Secretary of the Commonwealth or Virginia, on August 31, 1908;

And whereas, the said party of the third part is a corporation of the State of Virginia, duly chartered, organized and existing under and by virtue of an Act of the General Assembly of Virginia, entitled "An Act to incorporate the Alexandria & Fairfax Passenger Railway Company", approved February 18, 1890; and an Act of the General Assembly of Virginia, entitled "An Act to amend and reenact the first Section of an Act approved February 18, 1890, entitled 'An Act to incorporate the Alexandria & Fairfax Passenger Railway Company', approved February 25, 1892"; and an Act of the General Assembly of Virginia, entitled "An Act to amend and re-enact an Act entitled 'An Act to incorporate the Alexandria & Fairfax Passenger Railway Company', approved February 18, 1890, and to amend and re-enact an Act entitled 'An Act to amend and re-enact the First Section of an Act approved February 18, 1890, entitled "An Act to incorporate the Alexandria & Fairfax Passenger Railway Company", approved February 25, 1892", approved February 25, 1896, whereby *inter alia* the corporate name of the

22 said party of the third part was changed to Washington,

Alexandria & Mt. Vernon Railway Company, and, in addition to the said Acts of Assembly, three amendments of the charter of the said party of the third part granted by the State Corporation Commission of Virginia, and duly lodged in the office of the Secretary of the Commonwealth of Virginia, two thereof on February 25, 1905, and the third on September 2, 1908;

And whereas, by the terms of the aforesaid charter of the party of the first part, and the amendment thereto, the said party of the first part has authority to issue \$2,000,000.00 of common stock and \$1,000,00.00 of preferred stock, of which there has been issued and is outstanding \$1,000,000.00 of common stock full-paid, and \$25,000.00 of preferred stock full-paid, said corporation also having power and authority to purchase, lease, or construct, and to maintain and operate a railroad or railroads, to be operated with any kind of motive power, and to be used as a common carrier in the conveyance of persons or property, or both, extending from the town of Vienna, in the County of Fairfax, Virginia, to the village of Bluemont, in the County of Loudoun, Virginia, said corporation also having power to subscribe to, purchase or otherwise acquire the stock, bonds or other securities and obligations of other companies;

And whereas, the said party of the second part, under and by virtue of its charter aforesaid, has located and constructed certain lines of electric railway in the Counties of Alexandria and Fairfax, in the State of Virginia, as follows, namely:

22½ A Line extending from Rosslyn, in the County of Alexandria, to the town of Fairfax, in the County of Fairfax;

A line extending from Clarendon, in the County of Alexandria, to a point in said County of Alexandria known as Mt Vernon Junction, where a connection is made with the line of the party of the third part hereto;

And a line extending from Rosslyn, aforesaid, to Nauck in said County of Alexandria;

And whereas, the said party of the second part has issued full-paid capital stock amounting, at par, to \$500,000.00 and bonds of the character and amounts hereinafter described, viz: \$100,000.00 of "First Mortgage Bonds", consisting of 100 bonds for \$1,000.00 each, payable on the first day of July, 1925, with interest thereon, payable semi-annually on the first days of January and July in each year, at the rate of 6% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of July, 1895, from the said party of the second part to Walter Hinchman, Trustee, and duly recorded in the Counties aforesaid;

\$250,000.00 of "Second Mortgage Bonds", consisting of 250 bonds for \$1,000.00 each, payable on the 1st day of April, 1953, with interest thereon, payable semi-annually on the first days of October and April in each year, at the rate of 5% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of April, 1903, from the said party of the second part to the Merchants' Trust Company of the City of Philadelphia and State of Pennsylvania, Trustee, and duly recorded in the Counties aforesaid;

And \$1,000,000.00 of "First Consolidated Mortgage 5% Gold Bonds", consisting of 1,000 bonds for \$1,000.00 each, payable on the 1st day of September, 1958, with interest thereon, payable semi-annually on the first days of March and September in each year, at the rate of 5% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of September, 1908, from the said party of the second part to the Girard Trust Company, of the City of Philadelphia and State of Pennsylvania, Trustee, and duly recorded in the Counties aforesaid, and in the District of Columbia, except that \$398,000.00 of the said "First Consolidated Mortgage 5% Gold Bonds" are reserved in the hands of the said Girard Trust Company, Trustee, for the following purposes, viz:

\$100,000.00 for the acquisition by purchase or exchange or for the redemption of the \$100,000.00 of "First Mortgage Bonds" above mentioned;

\$250,000.00 for the acquisition by purchase or exchange or for the redemption of the "Second Mortgage Bonds" above mentioned; and \$48,000.00 for the acquisition by purchase, lease, construction or otherwise of additional lines of railway and improvements and equipments of the railway of the said party of the second part, so that at present \$602,000.00 of the said "First Consolidated Mortgage 5% Gold Bonds" are outstanding.

And whereas, the said party of the third part, under and by virtue of its charter aforesaid, has located and constructed certain lines of electric railway in the District of Columbia and in the County of

Alexandria, the City of Alexandria, and the County of Fairfax, in the State of Virginia, namely:

24 A line extending from its station at 12th Street and Pennsylvania Avenue, in the District of Columbia, by, through and over certain streets in said District of Columbia, and along its rights of way in the Counties of Alexandria and Fairfax in the State of Virginia, and, by, through and over certain streets in the City of Alexandria, Virginia, to Mount Vernon, in the County of Fairfax, Virginia; and also

A line from a point in Alexandria County known as Arlington Junction to Rosslyn, in the County of Alexandria, Virginia;

And whereas, the said party of the third part has issued full-paid capital stock amounting, at par, to \$1,500,000.00, and bonds of the character and amounts hereinafter described, namely:

\$2,500,000.00 of "First Mortgage 5% Gold Bonds", consisting of 2,500 bonds of \$1,000.00 each, payable on the 1st day of March, 1955, with interest thereon, payable semi-annually on the first days of September and March in each year, at the rate of 5% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of March, 1905, from the said party of the third part to The Real Estate Trust Company, of the City of Philadelphia and State of Pennsylvania, Trustee, duly recorded in the District of Columbia and in the City of Alexandria and in the Counties of Alexandria and Fairfax in the State of Virginia, of which bond issue \$2,450,000.00 is outstanding;

And whereas, the party of the first part is the owner of 550 shares of the full-paid capital stock of the party of the second part, of the par value of \$55,000.00, and is also the owner of 500 shares

25 of the full-paid capital stock of the party of the third part, of the par value of \$50,000.00, as well as of other valuable securities and property;

And whereas, the party of the third part is the owner of 3,400 shares of the full-paid capital stock of the party of the second part, of the par value of \$340,000.00, on which stock, under a certain indenture dated the 29th day of September, 1908, between the parties of the second and third parts hereto, dividends are guaranteed by the party of the third part hereto, as follows:

Date.	Rate.	Amount.
July 1, 1909	1%	\$5,000.00
January 1, 1910	1%	5,000.00
July 1, 1910	1½%	7,500.00
January 1, 1911	1½%	7,500.00
July 1, 1911	2%	10,000.00
January 1, 1912	2%	10,000.00
July 1, 1912	2½%	12,500.00
January 1, 1913	2½%	12,500.00
July 1, 1913	3%	15,000.00

and thereafter semi-annually, on the first days of January and July in every year at the rate of 3% semi-annually, or a semi-annual amount of \$15,000.00 for the full term of said lease, said lease being

for fifty-one years from and after the date of the aforesaid indenture, which said indenture is duly recorded in the Counties of Fairfax and Alexandria in the State of Virginia, and in the District of Columbia.

26 Now, therefore, this agreement witnesseth, as follows:

First. That the parties of the second and third parts hereto shall be and they are hereby merged into and with the party of the first part hereto, under the corporate name of Washington-Virginia Railway Company, subject to the approval of the State Corporation Commission of the State of Virginia to said merger, after this joint agreement shall have been duly approved by a majority of the stockholders of each of said corporations, parties hereto, in accordance with the requirements of the laws of the State of Virginia.

Second. That the number, names and places of residence of the principal Officers and Directors of said Company for the first year, or until their successors shall have been duly elected and shall have qualified, shall be as follows:

Name.	Office.	Residence.
Clarence P. King.....	President.....	Philadelphia, Pa.
W. H. Lawton.....	Treasurer.....	Philadelphia, Pa.
J. B. Hoellman.....	Secretary.....	Washington, D. C.
A. G. Clapham.....	Director.....	Washington, D. C.
Frederick Mertens.....	".....	Cumberland, Md.
Gardner L. Boothe.....	".....	Alexandria, Va.
George E. Warfield.....	".....	Alexandria, Va.
M. E. Church.....	".....	Falls Church, Va.

Third. That under said merger there shall be issued of the maximum authorized capital stock of the party of the first part \$975,000.00 preferred stock (9,750 shares of the par value of \$100.00 per share), and \$378,300.00 of the common stock (3,783 shares), all of which shall be fully paid and non-assessable, in addition to the

27 \$25,000.00 preferred stock (250 shares) fully paid, and in addition to the \$1,000,000.00 common stock (10,000 shares)

fully paid of the said party of the first part now issued and outstanding, all of which preferred stock shall be preferred both as to dividends and assets, shall be cumulative as set forth below, and shall contain inter alia provisions practically as follows:

a. That semi-annual dividends shall be paid thereon at the rate of 3% per annum for the fiscal year ending November 1, 1911; at the rate of 4% per annum for the fiscal year ending November 1, 1912; at the rate of 5% per annum for the fiscal year ending November 1, 1913; and at the rate of at least 5% per annum for subsequent years.

b. After payment of dividends on preferred stock equal to 5% thereon for any fiscal year, the preferred stock shall not share in any further profits of the Company for such year until dividends have been declared on the common stock for such fiscal year equal to 5% thereon, and thereafter the preferred stock shall share equally with the common stock on any additional dividends declared for

such fiscal year up to 7%; but the preferred stock shall be cumulative only at the rate of 3% for the fiscal year ending November 1, 1911; 4% for the fiscal year ending November 1, 1912; and 5% for any fiscal year thereafter and shall not be entitled, in any event, to share in the profits of the Company beyond dividends of 7% thereon for any fiscal year.

c. The preferred stock shall be redeemable at any time after three years from the issue thereof, at the price of \$105.00 per share, at the option of the company, on resolution of the Board of Directors. The preferred stock shall have no voting power.

Fourth. That the bonded indebtedness of the parties hereto shall remain unchanged, the party of the first part having no 28 bonded debt; the total authorized bonded debt of the party of the second part being \$1,000,000.00, of which there is outstanding, as above set forth, \$100,000.00 of 6% bonds and \$852,000.00 of 5% bonds; and the total authorized bonded debt of the party of the third part being \$2,500,000.00, of which there is outstanding, as above set forth, \$2,450,000.00 of 5% bonds.

Provided, that, the merging corporation shall have the power to require the trustee under the mortgage of the 1st day of September, 1908, from the party of the second part to the Girard Trust Company, and the trustee under the mortgage of the 1st day of March, 1905, from the party of the third part to The Real Estate Trust Company, above mentioned, to certify and deliver to it in accordance with the terms of said mortgages respectively from time to time, such of the bonds secured thereby as may not heretofore have been so certified and delivered for the purposes and under the conditions in said mortgages specified respectively, and said merging corporation and its officers shall have the right and power to use the names and seals of either or both of said merged corporations in making the necessary certificates to justify the delivery of said bonds, by either of said Trustees.

Fifth. That the capital stock of the party of the second part now owned by the party of the first part, amounting at par value to \$55,000.00, and the capital stock of the party of the second part now owned by the party of the third part, amounting, at par value, to \$340,000.00, shall be cancelled, and that the owners of the balance of said capital stock of the said party of the second part, aggregating at par value \$105,000.00, shall receive in exchange there-

for an equal amount of the preferred stock of the Washington-29-Virginia Railway Company, party of the first part hereto,

and in addition thereto said owners shall receive in par value common stock of the said Washington-Virginia Railway Company, an amount equal to fifteen per cent. (15%) of their said holdings, and said Washington, Arlington & Falls Church Railway Company stock as exchanged or otherwise acquired under the laws of the State of Virginia shall be cancelled. That the provisions contained in the indenture or lease between the parties of the second and third parts hereto, bearing date of September 29, 1908, relating to guaranteed dividends on the stock of the party of the second part hereto, as set out in the preamble hereto, shall no longer

be binding on the parties to said indenture or lease or on the Washington-Virginia Railway Company, and the said lease is hereby cancelled save that the said Washington-Virginia Railway Company assumes all liability of the party of the third part in guaranteeing the prompt payment of the principal and interest of the bonds of the party of the second part as set out in said lease.

Sixth. That the capital stock of the party of the third part now owned by the party of the first part, amounting, at par value, to \$50,000.00, shall be cancelled, and that the owners of the balance of said capital stock of the party of the third part, aggregating, at par value, \$1,450,000.00, shall receive in exchange therefor sixty per cent. (60%) of their holdings in the preferred stock of the Washington-Virginia Railway Company, party of the first part hereto, and in addition thereto the said owners shall receive an amount at par of common stock of the said Washington-Virginia Railway Company equal to twenty-five per cent. (25%) of their said holdings, and said balance of Washington, Alexandria & Mt. Vernon Railway Company stock as exchanged or otherwise acquired under the laws of the State of Virginia shall be cancelled.

30 Seventh. That on complying with the laws of the State of Virginia pertaining thereto, and upon the perfecting, as above set forth, of the said merger or consolidation, the several corporations, parties hereto, shall be deemed and taken as one corporation under the corporate name and style of Washington-Virginia Railway Company, upon the terms and conditions, and subject to the restrictions set forth in said agreement, and all and singular the rights, privileges, corporate powers and franchises of each of said corporations, parties to the same, as fully and effectually as if the corporate powers of the several corporations were granted to the merging corporation at length, and all property, real and personal, and all debts due on whatever account, as well of stock subscriptions as other things in action, belonging to each of said corporations, shall be taken and deemed as transferred to and invested in said Washington-Virginia Railway Company without further act or deed; and all property, all rights of way, and all and every other interest shall be effectually the property of the said Washington-Virginia Railway Company as they were of the former corporations, parties to this agreement; and the title to real estate, either by deed or otherwise, under the laws of the State of Virginia, vested in either corporation, shall not be deemed to revert or be in any way impaired by reason of this merger; the liens and rights of the bondholders and other creditors being preserved unimpaired; and the respective corporations shall be deemed to continue in existence to preserve the same; and all debts, liabilities and duties of either of said corporations shall henceforth attach to said Washington-Virginia Railway Company and be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it, all

31 as in that case by the statute law of the State of Virginia provided; and as to any and all property, real or personal, and all rights, franchises, easements and licenses owned by either party hereto and situated outside of the jurisdiction of the State of Vir-

ginia, or held under such circumstances that the Virginia statutes under which this agreement is executed will not operate to transfer the right thereto, a good and valid deed sufficient to transfer the same to the consolidated corporation shall be executed under the corporate seal of the corporation holding the same, properly acknowledged for record, and shall be duly recorded in accordance with the laws of the situs of such property, franchise, easement or license.

Eighth. The said Washington-Virginia Railway Company, as so consolidated, shall have the right to exercise all and singular the corporate powers now held by either of the said merging corporations, as well as all and singular the powers granted and conferred upon railroad corporations organized under the Act of the General Assembly of Virginia, entitled "An Act concerning corporations," which became a law May 21st, 1903, and all acts amendatory or supplemental thereto, whether heretofore or hereafter passed, and especially the powers conferred on such corporations under the provisions of Chapter two and Chapter five of said Act, including the power to subscribe to, purchase or otherwise acquire, and to guarantee and to become surety in respect to the stock, bonds and other securities and obligations of other corporations.

The above joint agreement was presented to the Board of Directors of the Washington, Alexandria & Mt. Vernon Railway Company, at a meeting held in the City of Philadelphia, Pennsylvania, on the 32 21st day of September, 1910, and was duly approved by said Board; it was presented at a meeting of the Board of Directors of the Washington, Arlington & Falls Church Railway Company, held in the City of Philadelphia, Pennsylvania, on the 22nd day of September, 1910, and was duly approved by said Board; and was presented to the Board of Directors of the Washington-Virginia Railway Company at a meeting held in the town of Falls Church, Virginia, on the 23rd day of September, 1910, and was duly approved by said Board.

In testimony whereof, the Board of Directors of the said parties hereto have entered into this joint agreement, under the corporate seals of their respective corporations, in order that the same may be submitted to the stockholders of each of said corporations at a meeting of said stockholders to be duly called for the purpose of taking the same into consideration.

(Signed)

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M. E. CHURCH,
GEORGE B. FADELEY,
L. L. NORTHRUP,
O. B. LIVINGSTONE,
F. E. PARKER,
H. C. HOUSTON,
T. M. TALBOTT, M. D.,

Directors of Washington-Virginia Railway Company.

Attest:

(Signed) F. E. PARKER, *Secretary.* [SEAL.]

(Signed) CLARENCE P. KING,
 " RICHARD W. KING,
 " JOHN W. PITTOCK,
 " JOHN W. RICH,
 " JNO. S. BARBOUR,

33 *Directors of Washington, Arlington & Falls
Church Railway Company.*

Attest:

(Signed) JOHN W. RICH, *Secretary.* [SEAL.]

(Signed) CLARENCE P. KING,
 " S. WYNNE FFOULKES,
 " H. H. PEARSON, Jr.,
 " E. H. STOKES,
 " F. H. TREAT,
 " J. W. PITTOCK,
 " HOWARD S. GRAHAM,
 " EDGAR H. BUTLER,
 " F. H. TREAT,
 " J. W. PITTOCK,
 " F. MERTENS,

*Directors of Washington, Alexandria &
Mt. Vernon Railway Company.*

Attest:

(Signed) JOHN W. PITTOCK, *Secretary.* [SEAL.]

34 COMMONWEALTH OF VIRGINIA:

Department of the State Corporation Commission.

CITY OF RICHMOND, 17th Day of October, 1910.

In re Merger and Consolidation of Washington, Arlington & Falls
Church Railway Company and Washington, Alexandria & Mt.
Vernon Railway Company into and with Washington-Virginia
Railway Company.

This day there was presented to the State Corporation Commission three certificates, by Washington-Virginia Railway Company, Washington, Arlington & Falls Church Railway Company and Washington, Alexandria & Mt. Vernon Railway Company, all corporations organized and existing under the laws of the State of Virginia respectively executed, signed and acknowledged by the President and Secretary of each of said corporations, with the respective corporate seals, attested by the Secretary of each corporation, affixed thereto, said certificates being accompanied by an agreement between said three corporations, bearing date on the 21st day of September, 1910, and properly executed by the officers of said corporations respectively, said certificates and agreements having for their object to effect a merger and consolidation of the capital stock,

franchises and property of each of the said corporations into and with the capital stock, franchises and property of the other two said corporations, the consolidated corporation to be known as the Washington-Virginia Railway Company and it appearing from the said papers that the said agreement was entered into between the boards of directors of the said three corporations and that it was submitted to the stockholders of each of the said corporations separately, at meetings called and held as required by law, and that at each of said meetings, on vote taken by ballot, more than a majority of the entire capital stock of each of the said corporations respectively, was cast in each of the said meetings in favor of the said agreement, consolidation and merger; and it further appearing from said papers that the requirements of Section 41, Chapter 5, of "An Act concerning corporations", which became a law on the 21st day of May, 1903, have been complied with by the said corporations:

The State Corporation Commission doth certify that it has ascertained and does now declare that the said corporations Washington-Virginia Railway Company, Washington, Arlington & Falls Church Railway Company, and Washington, Alexandria & Mt. Vernon Railway Company, have complied with the requirements of law and have entitled themselves to a merger and consolidation of the three corporations, the single and distinct corporation so created by merger and consolidation, to be known under and by the name of the Washington-Virginia Railway Company in accordance with the terms and provisions and subject to the conditions contained in the said agreement bearing date on the 21st day of September, 1910, to the same extent as if the said agreement were now herein transcribed in full. And the said single and consolidated corporation, Washington-Virginia Railway Company, is declared to be created pursuant to the provisions relating to merger and consolidation of corporations and subject to an Act of the General Assembly entitled "An Act concerning corporations", which became a law on the 21st day of May, 1903, and to have the powers and privileges conferred, and to be subject to all the conditions and restrictions imposed by said Act and by law.

And the said certificates presented to the Commission by
36 the said three constituent corporations, together with the said
agreement, are, with this order, certified to the Secretary of
the Commonwealth for record in his office, as required by law.

[SEAL.]

ROBERT R. PRENTIS, *Chairman.*
R. T. WILSON, *Clerk.*

COMMONWEALTH OF VIRGINIA:

Office of the Secretary of the Commonwealth.

IN THE CITY OF RICHMOND, *the 17th Day of October, 1910.*

The foregoing Articles of Merger of the Washington-Virginia Railway Company, Washington, Arlington & Falls Church Railway Company, and Washington, Alexandria & Mt. Vernon Railway

Company under the name of Washington-Virginia Railway Company, were this day received and duly recorded in this office, according to law, and certified to the Clerk of the State Corporation Commission.

[SEAL.]

B. O. JAMES.

Secretary of the Commonwealth.

37 COMMONWEALTH OF VIRGINIA:

[Seal of the State.]

OFFICE OF THE SECRETARY OF THE COMMONWEALTH.

I, B. O. James, Secretary of the Commonwealth of Virginia, certify that the foregoing is a true copy of the merger charter of the Washington-Virginia Railway Company, Washington, Arlington & Falls Church Railway Company, and Washington, Alexandria & Mt. Vernon Railway Company, under the name of Washington-Virginia Railway Company, recorded in this office on the 17th day of October, A. D. 1910.

Given under my hand and the Lesser Seal of the Commonwealth at Richmond, this the Thirteenth day of June, in the year of our Lord one thousand nine hundred and twelve and in the one hundred and thirty-sixth year of the Commonwealth.

[SEAL.]

B. O. JAMES,

Secretary of the Commonwealth.

38 [Endorsed:] No. 1980. Copy. June Sessions, 1912. United States District Court E. D. The Real Estate Trust Company of Phila. vs. Washington-Virginia Railway Co. Statement of Plaintiff's Claim. Enter rule on Defendant to file an affidavit of defence to the within claim in 15 days or judgment see reg. To Clerk of U. S. D. C. Joseph de F. Junkin, John G. Johnson, Attys for Pltf. To the within named defendants: Take notice that if an affidavit of defence is not filed in accordance with the above rule judgment will be entered against you. Witness our hands at Phila, this 5th day of July A. D. 1912. Joseph de F. Junkin, John G. Johnson, Att'y's for Pltf.

39 In the District Court of the United States for the Eastern District of Pennsylvania.

No. 1980, June Sessions, 1912.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA, Plaintiff,
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY, Defendant.

Bill of Exceptions.

(Filed May 27, 1913:)

Be it remembered that on the 19th day of July, 1912, defendant by its attorneys, appearing conditionally for the purpose of this

motion only, filed its motion for a rule on the plaintiff to show cause why the service of the writ of summons herein should not be vacated which said motion is in words and figures as follows, to wit:

"And now, July 19th, 1912, comes the Washington-Virginia Railway Company, by William A. Glasgow, Jr., and Norman Grey, its attorneys (appearing conditionally for the purpose of this motion only), and moves the Court for a rule on the plaintiff to show cause why the service of the writ in the above case should not be vacated.

NORMAN GREY,

WM. A. GLASGOW, JR.

Attorneys for Washington-Virginia Railway Company.

40 Whereupon on the same day, the Court, by the Honorable John B. McPherson, Judge, granted said rule in the words and figures, as follows, to wit:

"Before McPHERSON, J.:

Rule granted on the plaintiff to show cause why the service of the writ in the above case should not be vacated. All proceedings to stay meantime. Returnable Saturday, August 3rd, 1912.

By the Court,

Attest:

HENRY B. ROBB,
Dep. Clerk."

Thereafter depositions were taken upon said rule on behalf of defendant and plaintiff, as appears by a copy of the printed record sur rule to vacate service of writ in the above case, hereto attached and made a part of this Bill of Exceptions.

IN THE
District Court of the United States,
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

June Term, 1912. No. 1980.

REAL ESTATE TRUST COMPANY OF PHILA-
 DELPHIA,

vs.

WASHINGTON-VIRGINIA RAILWAY COMPANY.

AND NOW, July 19th, 1912, comes the Washington-Virginia Railway Company, by William A. Glasgow, Jr., and Norman Grey, its attorneys (appearing conditionally for the purpose of this motion only), and moves the Court for a rule on the plaintiff to show cause why the service of the writ in the above case should not be vacated.

NORMAN GREY,
 WM. A. GLASGOW, JR.,
*Attorneys for Washington-Virginia
 Railway Company.*

Before McPHERSON, J.

Rule granted on the plaintiff to show cause why the service of the writ in the above cause should not be vacated. All proceedings to stay meantime. Returnable Saturday, August 3rd, 1912.

BY THE COURT,
 Attest: HENRY B. ROBB,
Dep. Clerk.

2 Affidavit of Frederick H. Treat.

STATE OF PENNSYLVANIA,
COUNTY OF PHILADELPHIA. } ss.

I, FREDERICK H. TREAT, being duly sworn, on oath do depose and say that I am the person on whom was served the original writ against the Washington-Virginia Railway Company in the case of Real Estate Trust Company of Philadelphia vs. Washington-Virginia Railway Company, said case being brought in the District Court of the United States for the Eastern District of Pennsylvania, and I do further say that I am the President of the Washington-Virginia Railway Company and reside at Wayne, Pa.

I further say that the Washington-Virginia Railway Company is a corporation duly chartered and existing under the laws of the State of Virginia with its principal office at Mt. Vernon, Fairfax County, Virginia, and that it is an inhabitant and citizen of the State of Virginia, and that the said Washington-Virginia Railway Company is not now doing and never has done business in the State of Pennsylvania such as to give to the United States District Court for the Eastern District of Pennsylvania jurisdiction in the case above mentioned, it being, so far as the State of Pennsylvania is concerned, a foreign corporation.

I do further say that the Washington-Virginia Railway Company has and maintains a stock transfer office in the City of Philadelphia, No. 1307 Real Estate Trust Building, where the stock transfer books of the Company are kept and where all stock sold may be transferred on the stock books of said Company, and at this same office books of the Washington-Virginia Railway Company are kept, from information furnished to the officers of the Company, of the operations of said Company in the State of Virginia, and the City of Washington, District of Columbia, and that the office aforesaid is used only and solely for the purposes aforesaid and for no others whatsoever, and the Washington-Virginia Railway Company has no other office or place of business in the State of Pennsylvania.

Affidavit of Frederick H. Treat.

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The books of account above referred to are kept in the office of the Company here in Philadelphia for the convenience of the President and Treasurer, both of whom live in the State of Pennsylvania, and no office of the Company has ever been established in the State of Pennsylvania by action of the Board of Directors of the Company, except the fixing of the office for the transfer of stock above referred to, and except as above indicated, the Washington-Virginia Railway Company has not and does not do business in the State of Pennsylvania, and such business as is done in the office aforesaid in Philadelphia, is merely incidental and for the convenience of persons desiring to transfer stock, and for the convenience of the officers of the Company.

I do further say that the Washington-Virginia Railway Company was chartered for the purpose of and is operating an electric railway from the City of Washington, across the Potomac River, into the State of Virginia, and that said Company has no tracks and operates no trains or cars within the State of Pennsylvania, and in the office aforesaid are kept books of accounts for the information of the officers of the Company as to the operations of the railway only in the City of Washington and the State of Virginia.

I do further say that all of the monies received by the Company from the operation of its road are deposited by the Company in the City of Washington, D. C., and that the Company is not engaged in doing any business in the City of Philadelphia with citizens of the State of Pennsylvania.

FREDERICK H. TREAT.

Subscribed and sworn to before me
this 16th day of July, A. D. 1912.

JOHN H. HALL,
(SEAL) *Notary Public.*

My commission expires on the 16th
day of Jany., 1915.

4 Depositions on Behalf of Defendant.

IN THE
DISTRICT COURT OF THE UNITED STATES,
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

June Term, 1912. No. 1980.

THE REAL ESTATE TRUST COMPANY OF
PHILADELPHIA,

vs.

WASHINGTON-VIRGINIA RAILWAY COMPANY.

Depositions on behalf of defendant, sur rule to vacate service of writ before Henry B. Robb, Deputy Clerk of the District Court, at his office, Room 306 Post Office Building, Philadelphia, Pa., Thursday, February 13th, 1913, at 2 o'clock p. m.

Present:

HENRY B. ROBB, Esq., Deputy Clerk.

JOSEPH DEF. JUNKIN, Esq., for plaintiff.

JOHN H. HALL, Esq., appearing for W. A.
Glasgow, Jr., Esq., of counsel for defendant.

Mr. Hall moves that the taking of the depositions be continued until Saturday, February 15th, 1913, at 10 o'clock a. m., in view of the engagement of Mr. Glasgow.

Mr. Junkin objects to the continuance of the depositions on account of the long delay which has already ensued in taking the same.

MR. ROBB: In view of Mr. Glasgow's professional

Depositions on Behalf of Defendant. 5

engagement, the depositions will be continued till Saturday, February 15th, 1913, at 10 o'clock a. m.

Mr. Junkin calls upon the defendant company to produce at the next hearing the following papers, and persons:

1. A copy of the written statement, certificate or request, in whatever form it may have been made, to the Philadelphia Stock Exchange, requesting the listing of the securities of the Defendant Company upon such Exchange, and copies or originals of all correspondence and papers passing between such Philadelphia Stock Exchange or its Board of Governors or the officers thereof, and Defendant Company or its officers, in connection with the application for the listing of the securities of Defendant Company, upon such Exchange.
2. Copies of similar papers, if any such were sent, for a similar purpose, to the New York Stock Exchange and its officers.
3. The deposit books of Defendant Company for the months of June and July, 1912, covering the time the suit was instituted in this case, kept with the four depository banks of Defendant Company in the City of Philadelphia.
4. Any agreement in writing, either by form of lease or otherwise, between Defendant Company and the Lessee of the offices on the thirteenth floor of the Real Estate Trust Company Building, in which offices the Defendant Company keeps certain of its books and where certain of its officers have their desks and accommodations, concerning the payment by Defendant Company to the Lessee for its occupation of a portion of such offices.
5. Samples of all of the office stationery of the Company used by the officers or any of the employees of the Defendant Company at the said offices on the thirteenth floor of the Real Estate Trust Company Building in June and July, 1912.
6. A list of all the books, including books of ac-

6 Depositions on Behalf of Defendant.

count and stock books of the Defendant Company which were kept in such offices during the months of June and July, 1912.

7. The Treasurer and the Bookkeeper of the Defendant Company who had charge of and made entries in the books of the Defendant Company at the place where such books were kept in June and July, 1912, in the City of Philadelphia.

Meeting adjourned until February 15th, 1913, at 10 o'clock a. m.

Depositions on behalf of defendant, sur rule to vacate service of writ, taken before Henry B. Robb, Esq., at his office, Room 306 Post Office Building, Philadelphia, Pa., on Saturday, February, 15, 1913, at 11 o'clock a. m.

Present:

HENRY B. ROBB, Esq., Deputy Clerk.

JOSEPH DEF. JUNKIN, Esq., representing the plaintiff.

WILLIAM A. GLASGOW, JR., Esq.,

JOHN S. BARBOUR, Esq., and

NORMAN GREY, Esq.,

representing the defendant.

MR. JUNKIN: I make a further call upon the defendant to produce the minute books of the corporation of the Board of Directors of the Company, from the date of the organization to the present time.

MR. GLASGOW: I would like to have it stated on the record that we have the minute book here, and we would like to know what part of it, if any, you desire to examine.

MR. JUNKIN: I call upon the defendant to produce

the minute book for the purpose of further examining the same, in the presence of the Clerk of the Court, and giving extracts from such minutes, showing the designation of the Philadelphia offices, and any official action of either the stockholders or the Board. Also any reference in such minutes to the Philadelphia office, as such.

F. H. TREAT, having been duly sworn, was examined and testified as follows:

By MR. GLASGOW:

Q. Where do you reside?

A. Wayne, Pennsylvania.

Q. Have you any official connection with the Washington-Virginia Railway Company?

A. I am President of the Washington-Virginia Railway Company.

Q. How long have you been its President?

A. Oh, I was elected President of the Board of Directors in October, 1911.

Q. How long did you remain President of the Company?

A. I remained President until the merger of the Washington-Virginia Railway Company, which I think took place in November, 1912.

By MR. JUNKIN:

Q. There has been a merger with some other company since?

A. Yes.

Q. What is the name of that company?

A. The Washington Utilities Company, a Virginia corporation.

By MR. GLASGOW:

Q. In what State was the Washington-Virginia Railway Company incorporated? Under the laws of what State?

A. Virginia.

Q. Where is its principal office?

A. Its principal office is at Mt. Vernon.

Q. Fairfax County, Virginia?

A. Mt. Vernon, Fairfax County, Virginia; yes, sir.

Q. What was the business of the Washington-Virginia Railway Company?

A. Operating a railway company in the State of Virginia and in Washington.

Q. Was that its business in June and July, 1912?

A. Yes, sir.

Q. Has it ever engaged in any other business?

A. No other business.

Q. Was it incorporated then as a carrier company?

A. Yes, incorporated as a carrier company.

Q. Has it ever done any business of that character in the State of Pennsylvania?

A. Never.

Q. Has it at any time had, or did it have, in June or July, 1912, an office of any kind in the State of Pennsylvania?

A. It had an office in the State of Pennsylvania, at 1307 Real Estate Trust Building, for the transfer of stock and for the purpose of keeping books, the finished state of keeping books.

Q. What kind of books were kept there?

MR. JUNKIN: I ask the witness to please, in answering questions, try to confine himself to facts, and not to conclusions.

By MR. GLASGOW:

Q. There is a record of the books here?

A. I am not familiar with the names.

Q. You are not familiar with the names of the books?

A. No.

Q. What was the purpose of keeping the books here?

Frederick H. Treat.

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MR. JUNKIN: That is objected to as a statement and a conclusion, and not a fact.

A. The books are kept here for the convenience of the president and the treasurer.

Q. Who live in Philadelphia?

A. Yes. The president also lived in Philadelphia.

Q. Did it have an office in Washington?

A. Yes, sir, it did.

Q. What was that office?

A. That office was for the general business of the Railway Company.

Q. From what office did it operate its trains, and so forth?

A. From the office at Washington, at the corner of 12th and Pennsylvania Avenue, northwest.

Q. It runs a railroad, or ran a railroad, from a point in the District of Columbia, in Washington, into the State of Virginia, and down to Mt. Vernon.

A. It ran a railroad, that is, the line ran a railroad to Fairfax.

Q. And from that it operated passenger trains?

A. Passenger and freight both.

Q. You say they had an office in Philadelphia for the transfer of stock?

A. Yes, sir.

Q. Explain what you mean by that?

A. The stock transfer was kept at the Girard Trust Company. The stock was sent there for transfer.

Q. Registration?

A. They are the registrars, yes, sir.

Q. The registrars are the Girard Trust Company?

A. Yes.

Q. And then, when the stock was to be transferred—

A. It was sent there for transfer.

Q. Sent from the office, 1307?

A. Yes, sent from the office, 1307.

Q. To the Girard Trust Company, for registration?

A. That is right.

Q. Was there any business transacted at that office with citizens of Pennsylvania other than the transfer of stock, which may have been sent there for that purpose?

A. No, sir.

Q. Where were the receipts from the operation of the railway deposited?

A. They were deposited at the Commercial National Bank, Washington.

Q. Did you have at any time bank accounts in Philadelphia?

A. We had bank accounts in the city of Philadelphia; yes, sir.

Q. Where was the money received from which was deposited in Philadelphia?

A. Received from the Commercial Bank and transferred through the Commercial Bank at Washington.

Q. How was it transferred?

A. By check.

Q. By check of whom or what?

A. Check of the Washington-Virginia Railway Company.

Q. The Washington-Virginia Railway Company drew its check upon the bank in Washington?

A. The Commercial National Bank of Washington.

Q. Where its deposits were made?

A. Yes, sir.

Q. Then that was sent to Philadelphia, and deposited in such bank as you might select?

A. Yes.

Q. What was the purpose of that transfer of funds?

MR. JUNKIN: That is objected to, as the witness cannot state the purpose. What did he do?

A. At times we had large sums of money. We deposited this money through banks which the officers of the company we knew to be perfectly reliable. We

saved that money up until the interest upon the mortgages fell due. The Girard Trust Company was trustee of one mortgage. The Real Estate Trust Company was trustee of the other mortgage. We also saved up money in banks to pay dividends upon preferred and common stock, which at times gave us a good deal more money than we wanted to leave in the Commercial Bank.

Q. Vouchers and checks, which were made out for the ordinary operating expenses of the company; where were they made up?

A. All bills were approved in the Washington office at 12th and Pennsylvania Avenue, and sent here. Vouchers and checks were drawn from here and returned into Washington. They were sent out from Washington and paid from Washington.

Q. When you say from Washington, you mean from the office of the company in Washington?

A. I think I said that the commencement. That is what I intended to say.

Q. From what source of information were the books made up here, which were kept in this office of Philadelphia? I mean the information in them. Where did the information come from upon which the books were kept in Philadelphia?

A. When I assumed the office of President, the books were kept in Philadelphia, the transfers of stock were kept in Philadelphia. I carried on the office exactly as was carried on before.

Q. I mean, where did the information come from upon which the entries in the books were made in Philadelphia?

A. It was sent from the office of the Company in Washington. They made up the accounts at the end of the month, showing all bills that were paid, and went all over the accounts, establishing the cost of doing business, and they were forwarded here and accounts were made up from that.

Q. Those also showed the receipts?

A. Showed the receipts.

Q. And expenditures?

A. Yes, from day to day, and sent to us.

Q. Was there any other office of the company ever in Philadelphia or Pennsylvania other than the transfer office, and the office which you speak of, where the books were kept?

A. No, sir.

Q. Was any business transacted at that office with the citizens of Pennsylvania?

A. No. I don't think I understood that question. Any business transacted?

Q. Other than the transfer of stock and the keeping of books?

A. People occasionally came to see me, to talk regarding business matters, but I had no direct business for the railroad, except I think the matter of insurance. The parties went down to Washington, looked over the situation there, came up here, and we made the basis for the insurance.

Q. They went to Washington?

A. Yes.

Q. Went over the property?

A. Yes.

Q. And then came and talked to you here?

A. Yes. There was also a bond matter, the Old Dominion Railroad line, we talked over down in Washington, and we came up here and placed the bond here. They came into the office at the time, and met the general manager and myself there, after they came from Virginia.

Q. Will you please state the terms and conditions under which the Washington-Virginia Railway Company occupied space in the rooms at 1307 Real Estate Trust Building?

MR. JUNKIN: If this matter is in writing, I ask that the writing be produced.

MR. GLASGOW: It is not.

By Mr. GLASGOW:

Q. Is there any contract or lease in writing under which the Washington-Virginia Railway Company had office space there?

A. No.

Q. Will you please tell us what were the conditions, or the terms, under which the Washington-Virginia Railway Company occupied space in the office at 1307 Real Estate Trust Building, Philadelphia?

A. Clarence P. King leased several offices on the 13th floor of the Real Estate Trust Company Building, and he gave the use of those offices to the Washington-Virginia Railway Company at \$50 a month. They had the right to use the furniture, they had the right to use the stenographers, they had the right to use the telephone. It was all paid for by Mr. King, with one exception, I think one stenographer got eleven dollars and a quarter a month, I think, something like that.

Q. Then the offices at 1307 Real Estate Trust Building were the offices of Mr. Clarence P. King?

A. Yes. The Washington-Virginia Railway Company owned no furniture. They owned nothing. Absolutely nothing in the offices.

Q. Did Mr. King have any connection with the Washington-Virginia Railway Company?

A. Mr. King was originally the president of the Washington-Virginia Railway Company.

Q. He preceded you as president?

A. Yes.

Q. The office arrangements were in existence before you became president?

A. Yes, sir.

Q. Then, the Washington-Virginia Railway Company had no lease of the offices in the building, but by paying \$50 a month they had the right to use the furniture, the fixtures, and so forth, in the office?

A. And the 'phone; yes.

Q. Did the Washington-Virginia Railway Company have any contract or rights for the use of that, or were they there at the sufferance of Mr. King?

MR. JUNKIN: That is objected to as not only leading, but if the witness knows what the contract was, he should state the contract.

THE WITNESS: There was no contract. It was just month to month, as I understand it.

By MR. JUNKIN:

Q. That is your understanding?

A. Yes.

By MR. GLASGOW:

Q. Was there any contract under which they could have maintained the right, or could occupy those offices beyond a month, unless it was agreeable to Mr. King?

A. No, sir.

Q. Did the Company ever take out any license to do business in the State of Pennsylvania?

A. No, sir.

Q. Were they ever required to do so?

A. No, sir.

Q. Or asked to do so?

A. No.

MR. GLASGOW: You may cross-examine the witness.

MR. JUNKIN: Before cross-examining this witness, I call upon the defendant to respond to the various calls made, as follows:

1. To produce a copy of the written statement, certificate or request, in whatever form it may have been made, to the Philadelphia Stock Exchange, requesting the listing of the securities of the defendant company upon such Exchange, and copies or originals of all correspondence and papers passing between such Philadelphia Stock Exchange or its Board of Governors, or the officers thereof, and

defendant company or its officers, in connection with the application for the listing of the securities of defendant company, upon such Exchange.

MR. GLASGOW: We produce a printed copy of the letter referred to, of the Stock List Committee of the Philadelphia Stock Exchange, dated Philadelphia, May 2, 1911.

(Letter marked "Defendant's Exhibit 1 for identification, H. B. R.")

MR. JUNKIN: 2. Copies of similar papers, if any such were sent, for a similar purpose, to the New York Stock Exchange and its officers.

By MR. GLASGOW:

Q. Were there any such papers sent to the New York Stock Exchange?

A. Not to my knowledge.

By MR. JUNKIN:

Q. Your securities had not been listed on that Exchange?

A. No.

MR. JUNKIN: 3. The deposit books of defendant company for the months of June and July, 1912, covering the time the suit was instituted in this case, kept with the four depository banks of defendant company in the city of Philadelphia.

MR. GLASGOW: The defendant will admit that it had deposits in the four banks in Philadelphia, and the witness can name the banks during June and July, 1912, but the defendant objects to the introduction of depository books, because it is not material or relevant as to the amount of the balances.

MR. JUNKIN: I ask for one further piece of information to be obtained from the witness, to-wit, the average balances which were in such banks during the months of June and July, 1912.

MR. GLASGOW: The defendant declines to produce the books for that purpose, on the ground that it is not relevant.

By MR. GLASGOW:

Q. What banks did the Washington-Virginia Railway Company have deposits in, in the city of Philadelphia, during June and July, 1912?

A. The Girard Trust Company, the Bank of North America, the Corn Exchange Bank and the Central Bank.

MR. JUNKIN: 4. Any agreement in writing, either by form of lease, or otherwise, between defendant company and the lessee of the offices on the 13th floor of the Real Estate Trust Company Building, in which offices the defendant company keeps certain of its books, and where certain of its officers have their desks and accommodations, concerning the payment by defendant company to the lessee for its occupation of a portion of such offices.

By MR. GLASGOW:

Q. Mr. Treat, was there any agreement in writing, either by form of lease or otherwise, between the Washington-Virginia Railway Company and the lessee, Clarence P. King, of the offices on the 13th floor of the Real Estate Trust Company Building?

A. No, sir.

Q. In which offices the defendant company keeps certain books?

A. No, sir.

Q. Was there any other understanding or agreement other than you have testified to, as to the occupation of those offices?

A. No, sir.

By MR. JUNKIN:

Q. Do you speak of that of your own knowledge, or have you been so told?

A. I speak of it as my own knowledge.

Q. You have been connected with this company, as you say, as president, since November, 1911?

A. October, 1911.

Q. You were previously connected with the Washington & Alexandria Railway Company?

A. Oh, yes; as a Director.

Q. And you speak from your knowledge, from your previous knowledge of that situation?

A. I speak of it from my knowledge, which I believe to be correct.

MR. JUNKIN: 5. Samples of all of the office stationery of the company used by the officers or any of the employes of the defendant company at the said offices on the 13th floor of the Real Estate Trust Company Building in June and July, 1912.

MR. GLASGOW: Defendant produces samples of the stationery of the Washington-Virginia Railway Company called for under the 5th call made by the plaintiff company.

(Samples marked "Defendant's Exhibit 2 for identification, H. B. R.")

MR. JUNKIN: 6. A list of all books, including books of account and stock books of the defendant company, which were kept in such offices during the months of June and July, 1912.

MR. GLASGOW: The list, as given to me by the Treasurer of the company, is as follows:

1. General register.
2. Sundry ledger.
3. Bank ledger.
4. Stock ledger.
5. Stock transfer book.
6. Stock certificate book.

MR. JUNKIN: 7. Also the presence of the treasurer and the bookkeeper of the defendant

company who had charge of and made entries in the books of the defendant company at the place where such books were kept in June and July, 1912, in the city of Philadelphia, at this examination.

MR. GLASGOW: The defendant produces Mr. Lawton and Mr. Freeland, in response to this call.

MR. JUNKIN: 8. I made a call for the extracts from the minutes of the company, either of the Board of Directors or the Stockholders, showing the designation of the Philadelphia offices, or any reference thereto.

MR. GLASGOW: We have a minute book here, and propose to call a witness who has the book in charge, to show that there was nothing upon the minutes with reference to an office of the Washington-Virginia Railway Company, in the city of Philadelphia, but such minute book does show a by-law establishing a transfer office at the office of the Treasurer of the company, found at page 11, Article V.

MR. JUNKIN: The by-laws reads as follows:

“ARTICLE V.

Issuance and Transfer of Stock.

Section 2. The stock of the company shall be transferred only on the books of the company, at the office of its treasurer, or that of such other officer of the company as may be the duly designated custodian of the said books, by the stockholder himself in person, or by his attorney in fact, duly constituted, according to such forms as the Board of Directors may prescribe, upon the surrender of the certificate or certificates representing the holding intended to be transferred. The certificate or certificates surrendered shall be cancelled at the time of transfer, and afterwards securely attached to their respective stubs in the stock certificate book by the custodian thereof.”

Cross-examination.

By MR. JUNKIN:

Q. You have been president of the Washington-Virginia Railway Company, as I understand it, from October, 1911, until November, 1912, when this company was merged with the Washington Utilities Company of Virginia?

A. Yes, sir.

Q. What is the Washington Utilities Company of Virginia? What kind of a corporation? What is its business?

A. The company is formed under the laws of the State of Virginia, with a capital of one hundred million of bonds and fifty million of stocks. Their purpose is to operate railways, or steamboats, or water plants, supposed to be in the vicinity of Washington.

Q. Do you mean this Company, the Washington-Virginia Railway Company, was actually merged, so far as its physical property was concerned, with this new company?

A. Yes, sir.

Q. Just as the other companies were merged, forming that company?

A. Yes.

Q. Was this an electric railway company, among other things?

A. Yes.

MR. JUNKIN: I call for the production of the merger agreement with reference to this new company.

MR. GLASGOW: The defendant objects to the production of that, on the ground that the merger referred to, if it occurred, was long after the time at which this claim by the plaintiff in this case or the court had jurisdiction, and can have no relevancy whatever to the question of jurisdiction at the time this suit was brought.

By Mr. JUNKIN:

Q. Who is the President of the Washington Utilities Company of Virginia?

MR. GLASGOW: That is objected to on the same ground as above stated.

A. Frederick H. Treat.

By Mr. GLASGOW:

Q. You are the President?

A. Yes, sir.

By Mr. JUNKIN:

Q. Has that company an office in Philadelphia?

A. It has not; no, sir.

Q. Where is its office? Where does it have its office?

A. Hibbs Building, Washington.

Q. It has no books of any kind in Philadelphia?

A. No, sir.

Q. No transfer office in Philadelphia?

A. No, sir.

Q. Are its securities listed on the Philadelphia Stock Exchange?

A. No, sir.

By Mr. GLASGOW:

Q. The company also has an operating office at 12th and Pennsylvania Avenue, Washington, has it not?

A. The operating office is at 12th and Pennsylvania Avenue, Washington, Northwest, the old office of the Washington-Virginia Railway Company.

By Mr. JUNKIN:

Q. What other railways, if any, has this Washington Utilities Company in addition to those which were the property of the Washington-Virginia Railway Company?

MR. GLASGOW: That is objected to, and the witness is directed not to answer that question.

By MR. JUNKIN:

Q. As I understand you, all the books of every kind, stock, business and otherwise, of this company, are kept in Washington?

A. Kept in Washington; yes, sir.

Q. The Washington-Virginia Railway Company was composed of a merger of what company?

A. The Washington, Alexandria & Mt. Vernon, and the Washington & Arlington Falls Church.

Q. That merger took place on or about when?

A. On or about October 17, 1910.

Q. Were those two roads connecting roads?

A. Those two roads ran together out to Arlington Junction and they separated. One went down to Falls Church and the other went to Mt. Vernon.

Q. The Washington, Alexandria & Mt. Vernon road, under that or names which have been changed by legal proceedings in Virginia, had been in existence for how many years?

A. That I could not tell you.

Q. Approximately how many years?

A. That I could not tell you.

Q. How many years have you been connected with it as a stockholder or officer?

A. I should judge about six years, I have no way of telling.

Q. Six years from when?

A. From the present time.

Q. Do you mean you had not been interested in the forming of this road running from Washington and Mt. Vernon, under whatever name, prior to 1906?

MR. GLASGOW: That is objected to as not material.

A. Not to the best of my knowledge. I really do not remember. I am interested in a good many of those utilities companies, and I could not tell you how long I have been interested in that company, without looking it up.

Q. Your best recollection is about six years?

A. I would say it was; yes, sir.

Q. That would make it four years prior to this merger?

A. Yes.

Q. That you have been interested as a stockholder and also a director?

A. Yes, sir; perhaps longer than that. I have no way, except my own mental ability, of telling. I cannot date back that far.

Q. For at least a number of years prior to 1910, you have been interested in the Washington, Alexandria & Mt. Vernon Railway Company, which was one of the merging companies of this Washington-Virginia Railway Company?

A. Yes; and I had taken a very active interest in the road, at that time.

Q. As a director and stockholder?

A. Yes.

Q. What other office, beside that of director, did you hold in the company?

A. No office, until the present office.

Q. Of the presidency of the merged road?

A. Yes.

Q. Except the office of director?

A. That is all.

Q. Prior to this merger, who had been president of the Washington, Alexandria & Mt. Vernon Company?

A. Clarence P. King.

Q. Do you know how many years he has been President of that company?

A. I don't know; no.

Q. That was a Virginia corporation, was it not?

A. Yes, sir.

Q. That corporation maintained an office in the city of Philadelphia in the same place, did it not?

A. Yes.

Q. And for the entire time in which you were connected with it, or knew of it?

A. Yes, at Washington.

Q. I said in Philadelphia.

A. Philadelphia?

Q. Yes.

A. Yes.

Q. It kept its books there, did it not?

A. Yes.

Q. Was its stock registered upon the Philadelphia Stock Exchange?

A. I think not.

Q. Or its bonds?

A. No, sir.

Q. Its stock transfer books were kept in Philadelphia, were they not?

A. Yes.

Q. And its general business books were kept in Philadelphia, such as are kept now by the Washington-Virginia Railway Company?

A. Yes, I believe they were.

Q. Mr. King is still a director of that, and was in June and July, 1912, a director of the Washington-Virginia Railway Company, was he not?

A. Yes, sir.

Q. And had some other office, did he not, in that company, besides that of director? Was not he vice-president?

A. No, sir.

Q. This Washington-Virginia Railway Company, incorporated in October, 1910, you state operated both in Virginia and in the District of Columbia?

A. Yes, sir.

Q. Over the former railway line of the Washington, Alexandria & Mt. Vernon Company?

A. They operated in the State of Virginia over the Washington, Alexandria & Mt. Vernon Railway, from the bridge, going out. In the city they went over the tracks of the Washington-Virginia Railway Company.

Q. By some agreement?

A. Yes.

Q. And that had been the status of the railroad situation prior to this merger?

A. Yes, sir.

Q. And there was no alteration in the same after the merger?

A. Not that I am aware of.

Q. And it is so continuing today?

A. Yes.

Q. You stated in your examination-in-chief that the business of operating the railway was conducted from the Washington office, as I understood you. Is that correct?

A. Yes, sir.

Q. That has always been the case of that line?

A. Yes.

Q. It has no charter from the District of Columbia, or from the United States Government, has it?

A. No; not that I am aware of.

Q. What office has it? How many rooms has it in Washington?

A. It has a lower floor, that they use for a reception room and ticket office. It has on the upper floor the president and assistant general-manager, the general manager's room, all in one. Then it had two large rooms, which are used there for collecting all moneys and taking care of the affairs of the company, and it has two other small offices there.

Q. What books in June and July, 1912, were kept at the Washington operating office?

A. Returns from the roads were made there from day to day, and that was deposited in the Commercial Bank of Washington, and then the general accounts were sent up here from there.

Q. What do you mean by "general accounts"? I asked you what books were kept in Washington at the operating office. You have spoken about cash books and daily receipts. What other books were kept there?

A. Records of the bills that were to be paid were kept there, I think. They are the only books I would know of that were kept there.

Q. These bills, as I understand you, were certified from the operating office in Washington to the Philadelphia office?

A. These bills were approved at the office of the company in Washington and sent up here to Philadelphia, where a voucher was made out and a check was made out for them, and then returned to Washington, and the bills sent out to the proper parties from there.

Q. Who checked upon the bank account in Washington?

A. The treasurer of the company.

Q. Who was in Philadelphia?

A. You, sir.

Q. What money was paid out of the Washington office of any kind in cash?

A. No money was paid out from the Washington office in cash except for petty amounts, small amounts.

Q. How were the employees of the company on the railway, paid?

A. Their accounts were sent up here, and they were returned again to the Washington office, and sent out to the parties that they were payable to.

Q. I am talking about the conductors and the motor drivers.

A. The conductors, as I remember, were paid out of a general check that was made to the railroad manager of the road, Mr. Hudlin.

Q. He drew the check in Washington?

A. The check was made to him. He got the check cashed and paid the conductors and motormen.

Q. Those checks were on the Washington bank account?

A. On the Commercial National Bank of Washington.

Q. And there was no one in Washington who had authority to check the bank account in Washington?

A. No.

Q. As I understand you, then, the Washington bank account was used as a depository account of the actual cash receipts of the road from day to day?

A. That is right; yes, sir.

Q. And the checks were drawn at the Philadelphia office after the vouchers were sent from the Washington office?

A. That is right; yes, sir.

Q. The pay-roll check came back, and was cashed in Washington, and the moneys disbursed?

A. So I understand.

Q. Supposing such a thing as a car was purchased, or a large purchase of materials of any kind, new rails or ties, or the payment of contracts, where were they paid?

A. That was approved at Washington, sent up here, and a check returned to Washington and sent from there for the payment of a car or ties, or whatever it may be.

Q. The actual envelope containing the check and the amount went out from Washington, from the Washington office?

A. Yes, sir.

Q. Were items of that kind all drawn upon the Commercial account in Washington, or were they drawn, as the occasion required, when the cash accounts happened to be such, that it was more fitting to have them drawn upon the bank accounts here?

A. They were drawn upon the Commercial at Washington.

Q. In every case?

A. Yes, sir.

Q. You feel confident of that?

A. I do.

Q. What checks were drawn upon the bank accounts in Philadelphia?

A. Checks were drawn, after the money was de-

posited, and was re-deposited in the Girard Trust Company, or the Real Estate Trust Company, drawn by checks of the treasurer upon those banks.

Q. I understand, of course, the bank accounts in Philadelphia were drawn upon by the treasurer's checks, but to whom were those checks given? How were the moneys in Philadelphia used?

A. The moneys in Philadelphia were used generally to pay the mortgage interest, or pay the interest upon the common stock and preferred stock.

Q. You mean dividends?

A. Yes, sir.

Q. Were there any instances when such bank accounts were used for current business accounts of the company?

A. Not that I know of.

Q. It might have been so?

A. The treasurer could answer that question?

Q. Was there any bank account kept in the State of Virginia?

A. There were three accounts kept in the State of Virginia.

Q. During June and July, 1912?

A. There were three that were kept in the State of Virginia.

Q. Whereabouts?

A. Alexandria.

Q. All in Alexandria?

A. Yes, sir.

Q. What were those bank accounts? What moneys were put into those bank accounts?

A. They were transferred from the Commercial National Bank at Washington.

Q. That is, all receipts went into the Commercial National Bank at Washington?

A. Yes, sir.

Q. And when moneys were needed for local purposes in Alexandria, moneys would be sent from the

Commercial National Bank at Washington to the bank account in Alexandria?

A. They were sent to the banks of Alexandria simply as a depository. They were deposited there.

Q. How were the moneys put in those deposits?

A. It was transferred back again, used for the paying of the debts of the company. As I remember the bank account of Alexandria, small amounts were kept there, and those accounts remained there.

Q. They were not active bank accounts of the business of the company?

A. No, sir.

Q. The active bank accounts were the ones that you have testified to, the ones in Washington and Philadelphia?

A. Yes, sir.

Q. Where did the Board of Directors meet?

A. The Board of Directors met at the call of the president.

Q. Where?

A. They met, under my presidency, at the company's office at Washington, at the corner of 12th and Pennsylvania Avenue, N. W.

Q. Invariably?

A. There is one meeting that is held at Camden, New Jersey.

Q. Was there no meeting ever held in the office in Philadelphia?

A. No, sir; not under jurisdiction.

Q. Do you know of any meetings being held there?

A. Yes, sir.

Q. When?

A. When Mr. King was president, there were several meetings held in Philadelphia.

Q. That was prior to November, 1911?

A. Yes, sir.

Q. Did the Board have a regular manner of calling meetings, or were meetings simply called?

A. Meetings were called at the call of the president.

Q. So that meetings have been held, since you have been a member of the Board, in Washington, in Philadelphia, and in Camden?

A. No, sir; one meeting was held in Camden, the balance of the meetings were held in Washington.

Q. Were you a member of the Board when the meetings were held in Philadelphia?

A. Yes, I was.

Q. That was my question.

A. Yes, sir.

Q. Not during your presidency, but during your membership on the Board?

A. Yes, sir.

Q. You know, do you not, that the general laws of Virginia provide that the boards of directors of Virginia corporations may hold their meetings of the directors, either within or without the State?

A. Yes.

Q. And may have offices within or without the State?

A. Yes, sir.

Q. And also may purchase, mortgage and convey real estate or personal property, as well within as without the State?

A. I don't know regarding that. That is beyond me.

Q. Where was the principal office of this corporation in June and July, 1912, as required by the laws of the State of Virginia?

A. Mt. Vernon.

Q. Mt. Vernon, Virginia?

A. Yes, sir; Fairfax County.

Q. What did that office consist of?

A. There is a building there that is owned by the company that is used for restaurant purposes, the lower part of it, and for the sale of books and pam-

phlets for tourists. There is a room in the upper floor where we hold our meetings at times.

Q. I am talking now about the Washington-Virginia Railway Company. Did it ever hold a meeting in that room?

A. They went down there in a car, and held a meeting in the private car of the company. I think that we got out of the car and went into that room and held a meeting there; yes.

Q. That was a stockholders' meeting?

A. Yes.

Q. Did they ever have any officers there, any elective officers?

A. No.

Q. Do you keep any books there?

A. No.

Q. And that room was used, was it not, only for the annual stockholders' meeting?

A. It was always in the same room; I suppose it was.

Q. No other meetings were held there?

A. No, sir; not other meetings.

Q. Am I clear in my understanding of your answers that the Alexandria bank accounts were merely places where some of the moneys of the company were kept from time to time, without being in active use?

A. Yes, sir.

Q. And the moneys deposited in those accounts came from the Washington bank account?

A. Yes.

Q. And went back to the Washington bank account?

A. Came from our depository in Washington, the Commercial National Bank.

Q. And came back to that bank account?

A. I presume they would, yes.

Q. Were any Board meetings ever held in the city of Washington itself?

A. Held at the company's office in the city of Washington.

Q. How often, during your presidency?

A. They were held according to the necessities of the company. They might have been held once a month, or once in two months, or twice a month, whenever the necessity arose for the calling of a meeting, it was called.

Q. That was a matter of convenience for the members of the Board, was it not, as to where it was held?

A. That was a matter for the president to decide, upon matters that should come before the Board of Directors.

Q. And the place of meeting was held for the convenience of the members of the Board?

A. Yes.

Q. What officers of the company, in either the Mt. Vernon office or the Washington office, were elective officers?

A. The assistant general manager's office was there.

Q. Was where?

A. At Washington. The president had an office there, and the vice-president.

Q. I am asking what physical members of the staff were in the city of Washington, living there?

A. The assistant general manager, Mr. Hoellman, and the superintendents of the road lived there.

Q. And in Philadelphia there was also the president, the vice-president, the secretary and the treasurer?

A. Yes; the treasurer and Mr. Hoellman. The secretary was living at Virginia.

Q. The secretary living in Virginia?

A. Yes.

Q. Whereabouts in Virginia?

A. He lived down at Four Mile Run.

Q. Did he have any active duties to perform beyond the duties of keeping the minutes of the company?

A. He was the general manager of the road, the assistant general manager of the road.

Q. He lived in Virginia?

A. Yes.

Q. The treasurer, the vice-president and president were in Philadelphia?

A. Yes.

Q. (Book shown witness.) Do you recognize this large book which I show you?

A. I recognize it as a book, yes.

Q. What book is it?

A. Boyd's Philadelphia City Directory.

Q. You are familiar with that book, are you not?

A. No.

Q. Don't you recognize that as being the Philadelphia City Directory?

A. I recognize it, reading there, as a city directory.

Q. I notice under the letter "W" in this book—this is the year 1912, is it not?

A. 1912, yes.

Q. Under the letter "W" an entry in regard to your road, to which I call your attention. Will you kindly look at it? Will you please read it?

A. "Washington, Virginia Ry. Co., 1307 Real Estate Trust Building."

Q. Under the title of Washington?

A. Under the title of Washington-Virginia Railway Company, 1307 Real Estate Trust Building.

Q. You have several times spoken of the Washington room above the place where the tickets were sold as being a room wherein the president, manager and so forth had their offices, and did you have a desk there?

A. Yes, sir. I did not have a desk. I had a large table there, which was my sole table.

Q. Did the table have drawers?

A. Yes.

Q. In the drawers you kept your papers?

A. Yes; all papers that came there during my absence. I was at Washington one day every week, and sometimes twice a week. I spent a great deal of time in Washington. All the papers came to me, of different citizens' committees, whatever it might be, they were put on that table.

Q. You also had a desk in the City of Philadelphia, had you not?

A. I had a desk.

Q. In 1307 Real Estate Trust Building?

A. Yes, sir.

Q. Where you also kept papers of the railroad?

A. In my office, my business there was to work out the transfer of stock, and what was necessary for me to do regarding the keeping of books.

Q. You also kept the general papers of the railroad company in your desk in Philadelphia, did you not, from time to time?

A. Yes; I kept some papers there that I might receive there from the railroad company.

Q. You also received letters there, did you not, from time to time, concerning the business of the company?

A. Yes.

Q. And you made replies as to such letters, did you not, upon the stationery of the company, samples of which have been introduced here today?

A. I made my replies upon my own stationery, the stationery of F. H. Treat, President's Office, I think something of that kind.

Q. You had stationery on the letter-heads of the railroad, reading as follows: "Washington-Virginia Railway Company, 1307 Real Estate Trust Building, Philadelphia", and then in the corner, "Office of F. H. Treat, President"?

A. That is right.

Q. That is the stationery you used in the Philadelphia office?

A. Yes, sir.

Q. Did you have any stationery of similar kind in the Washington office?

A. I used the regular stationery that the Washington office had, that had the names of all the officers, and Mr. Hoellman's name, I think, was upon it. He was an officer.

Q. That is a sample produced here this morning, which shows the same stationery heading, "Washington-Virginia Railway Company, 1202 Pennsylvania Avenue, N. W., Washington, D. C., F. H. Treat, President. J. B. Hoellman, Secretary. W. H. Lawton, Treasurer. R. W. King, General Manager." That is the stationery you used in Washington?

A. Yes.

Q. For official correspondence there?

A. Yes, sir.

Q. I notice also that among the stationery produced here this morning are four samples of small and large envelopes, with the endorsement on the outside, printed, "Return in 15 days to 1307 Real Estate Trust Building, Philadelphia, Pa." Those were the envelopes you used in Philadelphia?

A. I believe they were; yes, sir.

Q. Who was the vice-president of the Washington-Virginia Railway Company in June and July, 1912?

A. R. W. King was the vice-president of the company, not a director, but vice-president.

Q. And the treasurer was whom?

A. Mr. W. H. Lawton.

Q. He lived in Philadelphia?

A. He lived in Philadelphia.

Q. And had been living in Philadelphia, as the treasurer of the road, and as the treasurer of the Washington, Alexandria & Mt. Vernon road, for how many years, to your knowledge?

A. I would rather he would answer that question. I think it was three years, but I am not positive of the facts.

Q. You were in the Philadelphia office a considerable portion of your time, were you not?

A. I am in the Philadelphia office on Mondays and Tuesdays of each week, from 11 o'clock or half-past eleven until 2 and 3 in the afternoon.

Q. And during your incumbency of this office of president of this company, until the merger, such business as had to be transacted by you as president, was transacted from your Philadelphia office?

A. Yes; that pertaining to the Philadelphia business. I was in Washington, from two to three days every week, where I looked after the matters pertaining to the business of the company, from the general office of the company there.

Q. Were there not constantly questions asked which would arise from time to time which required interviews and business transactions and consultations and talks concerning this railroad while you were in your Philadelphia office?

A. Very few.

Q. There were such instances?

A. Very few.

Q. But there were such instances?

A. Sometimes I did not see anyone regarding the Washington-Virginia Railway Company's affairs in the Philadelphia office for weeks. Every one that was conversant with the affairs of the Washington-Virginia Railway Company knew I would be in Washington, and they would wait until I came to Washington to consult with me regarding the affairs of the company.

Q. If they were Washington people and Virginia people?

A. Yes. That is where all our business was done, in that section of the country.

Q. That is, your railroad business, you are talking about?

A. Yes.

Q. Where were the dividends made up?

A. Made up here.

Q. And the checks for interest on the mortgages?

A. Were made up here.

Q. Where were they sent out from?

A. The treasurer's office.

Q. Philadelphia?

A. I don't know. I think they were deposited direct from the treasurer's office, but the treasurer would have to answer that question himself.

Q. As far as you know, the payment of the interest and the payment of the dividends was all done from the Philadelphia office, or the Philadelphia bank?

A. I believe it was, but the treasurer is here, and he can answer that question himself.

Q. Where are the receipts showing the character of the business of the company kept?

A. I believe they are kept in the Philadelphia office.

Q. The acknowledgments of the interest, and the dividends and the interests?

A. You will have to ask the treasurer, I am not positive on that question.

Q. Is it not a fact that you kept as comparatively small a balance that you could not avoid keeping in the Commercial Bank in Washington, that is, you kept your balance reduced, by drawing from it, and depositing the funds in a Philadelphia bank?

A. I think the accounts in the Commercial Bank got to be a very large account at times. It ran up and down, according to the requirements of the business.

Q. But whatever moneys were not in active use, you kept in Philadelphia?

A. Yes, sir; kept in Philadelphia and kept in Washington and Alexandria. We kept moneys there.

Q. Those were small amounts?

A. Yes.

Q. Where was the seal of the company kept?

A. I think it was kept by the treasurer of the company.

Q. Kept by the treasurer of the company?

A. Yes.

Q. In Philadelphia?

A. He can answer that question himself.

By MR. GREY:

Q. The question was, whether it was kept by the treasurer of the company in Philadelphia.

A. I believe it was, but I am not positive of that fact. The treasurer can answer that question.

By MR. JUNKIN:

Q. When you said you had no business transactions at the office in Philadelphia with citizens of Pennsylvania, are you positively accurate on that?

A. Yes.

Q. You do not recall having any occasion—

A. Only the occasion I mentioned.

Q. To have business transactions with citizens of Pennsylvania?

A. What do you mean by "business"? Business concerning the operation of the Washington-Virginia Railway Company?

Q. You were referring to the railroad work of the company.

A. The railroad work; yes.

Q. And by saying you had no business transactions, you refer to word of mouth transactions? You might have had considerable correspondence, might you not, at various times, in your Philadelphia office, concerning business transactions of the railroad as a railroad?

A. No, I did not.

Q. Are you sure you did not write letters concerning the business of the railroad?

A. The letters that were written regarding business transactions of the Washington-Virginia Railway

Company were very, very few, written from Philadelphia.

Q. But there were some written from Philadelphia?

A. Very likely there were, that is, transactions of the operations of the railroad, but very, very few. Very little business was done from here, if any.

Q. You are a very busy man, are you not, and you have a great many other matters besides this, in your repertoire?

A. Yes, I think I am.

Q. And you cannot pretend, after this length of time, to remember all the interviews you had here, or in Washington, or elsewhere, can you?

A. I think I can remember back for a year or a year and a half very clearly. I do not think my business relations with other things would prevent me from doing that.

Q. Mr. Clarence P. King, former president of this company, and also the former president of the Washington, Alexandria & Mt. Vernon Railway Company, had been connected with the enterprise for a great many years, had he not?

A. I believe he had.

Q. From its inception?

A. Yes, sir.

Q. He had had his office for many years in this suite on the 13th floor of the Real Estate Trust Building?

A. Yes.

Q. And his transactions and his various corporations, including this one, were directed from the main office, were they not?

A. I think they were.

Q. He had been president of the Washington, Alexandria & Mt. Vernon Railway Company for many years prior to the consolidation, had he not?

A. Yes, sir.

Q. Do you know whether or not that railroad paid a rental under a lease to Mr. King—that is, the Washington, Alexandria & Mt. Vernon Railway Company?

Mr. Glanville: That is objected to as irrelevant.

By Mr. Justice:

Q. Did they pay a rental to Mr. King for the use of the railroad?

Mr. Glanville: That is objected to, on the ground that the witness has stated that there was no lease.

Mr. Justice: I am talking of the other railroad.

Mr. Glanville: Then that is objected to, on the ground that there is no evidence that there was any lease.

By Mr. Justice:

Q. I repeat the question. Do you know whether or not that railroad company paid a rental under a lease to Mr. King—that is, the Washington, Alexandria & Mt. Vernon Railway Company?

A. I don't know.

Q. Was the physical road itself altered, extended or in any way changed, excepting by acquire from time to time, after it became a part of the Washington, Alexandria Railway system, from what it had been prior to that time?

A. There were a few changes made in the railroad running from Lucy down towards Falls Church. The road is straightened out there.

Q. It is straightened out, but not extended in any way?

A. Yes.

Q. Is this the same physical road it was before, practically?

A. Yes. A little road was laid I think for diversion, from Falls Church.

By MR. GLASGOW:

Q. I understood you to say it was a combination of two roads.

A. It was. I am speaking now of the Washington-Virginia Railway Company, which is a combination of two roads.

Q. A combination of two?

A. I am speaking of that. What I am saying is pertaining to the Washington and Falls Church.

Q. Mr. Junkin's question was whether the Washington-Virginia Railway Company operated any different road from the old Washington, Alexandria & Mt. Vernon Railway Company. As I understand it, the Washington, Alexandria & Mt. Vernon Railway Company operated one road, and then the Washington-Virginia Railway Company operated that road, and an additional road, which it purchased?

A. So they did.

By MR. JUNKIN:

Q. My question was directed to the physical effect, whether or not there was any physical alteration in the road taken over by the Washington, Alexandria & Mt. Vernon Railway Company after the consolidation?

A. As I understood your question, it was if the Washington & Falls Church lines were taken in, in the physical combination of the road, and altered?

Q. Yes, by extension or any substantial change.

A. The physical conditions of the road were very greatly improved, after they were taken over. Two or three miles of double track were laid, and the track was straightened out.

Q. It was substantially the same railroad that it was before?

A. Substantially, yes.

MR. JUNKIN: I want to offer in evidence the papers identified by the witness.

(Defendant's Exhibit No. 1, for identification, H. B. R., is as follows:)

Defendant's Exhibit 2 for Identification, H. B. R.

PHILADELPHIA STOCK EXCHANGE.
Securities Listed.

WASHINGTON-VIRGINIA RAILWAY COMPANY
PREFERRED AND COMMON STOCKS.

Stock List Committee, Philadelphia, May 2, 1911.
Philadelphia Stock Exchange,

The Washington-Virginia Railway Company hereby makes application to have placed on the regular list of the Philadelphia Stock Exchange its capital stock, amounting to \$1,000,000 of Preferred and \$1,378,300 of Common Stock.

PREFERRED STOCK.

The authorized issue of Preferred Stock is \$1,000,000, represented by 10,000 shares of the par value of \$100 each; preferred both as to assets and dividends. The dividends on the Preferred Stock are payable semi-annually, in May and November as follows: 3 per cent. for the year ending November 1, 1911 (of which the first semi-annual installment was paid March 15, 1911); 4 per cent. for the year ending November 1, 1912; 5 per cent. for the year ending November 1, 1913; and thereafter at the rate of 5 per cent. per annum for each year ending November 1. These dividends are cumulative. In addition it is provided that when dividends of 5 per cent. shall be paid on the common stock, the preferred shall share equally with the common in additional dividends up to 2 per cent. (or 7 per cent. in all) per annum, but these additional dividends are not *not* cumulative. The Preferred Stock is redeemable at the option of the Company by resolution of the Board of Directors any time after three years from date of issue, at 105.

COMMON STOCK.

The authorized issue of Common Stock is \$2,000,000, represented by 20,000 shares of the par value of \$100 each. There are outstanding at the present time 13,783 shares of the aggregate par value of \$1,378,300, which is all that has been authorized to be issued up to the present time. All these shares are outstanding in the hands of the public, both Common and Preferred.

Each class of stock has equal voting power, each share of stock entitling the holder to one vote in person or by proxy at all meetings of stockholders. The stock outstanding has been issued full paid and non-assessable, as follows:

For Property	\$ 253,300
“ Cash	50,000
“ Exchange for stock of)	
merged Washington,)	1,500,000
Alexandria & Mt. Ver-)	
non Co.)	
“ Exchange ditto of)	
Washington, Arlington)	575,000
& Falls Church Co.)	

Total (Common and Preferred) \$2,378,300

Stock is transferred at the Company's general office, 1307 Real Estate Trust Building, Philadelphia, and registered by the Girard Trust Co., Philadelphia, Registrar. Both classes of stock are listed on Washington (D. C.) Stock Exchange.

A dividend of 1½ per cent. on the Preferred Stock and 1 per cent. on the Common Stock of the Company was paid March 15, 1911.

BONDS.

The Washington-Virginia Railway Company has no bonded indebtedness of its own, but under the merger agreement (see Organization) it has assumed lia-

bility for the bonds of other merged companies, as follows:

**WASHINGTON, ALEXANDRIA & MT. VERNON
RAILWAY CO.**

First Mortgage Five Per Cent. Gold Coupon Bonds, dated March 1, 1905, maturing March 1, 1955, interest payable March and September. Authorized \$2,500,000, issued \$2,450,000, outstanding in the hands of the public \$2,350,000. Principal and interest payable at the office of the Real Estate Trust Company of Philadelphia. Subject to call on any interest date at 110 and interest upon three months notice by publication. \$100,000 of the bonds have been issued and are held in the Company's treasury to be sold at the discretion of the Company. The remaining \$50,000 are reserved in the hands of the Trustee, the Real Estate Trust Company of Philadelphia, for future improvements, extensions and acquisitions at 80 per cent. of actual cost. No sinking fund provisions in the mortgage.

**WASHINGTON, ARLINGTON & FALLS CHURCH
RAILWAY CO.**

\$100,000 First Mortgage Six Per Cent. Bonds, dated July 1, 1895, and maturing July 1, 1925. Subject to call on any interest date at 105 and interest. Interest payable January and July at the Girard Trust Company, Philadelphia. No sinking fund is provided for. Walter Hinchman, New York City, Trustee. \$100,000 authorized and all issued and outstanding.

Same Company: \$350,000 authorized, \$250,000 issued and outstanding, Second Mortgage Five Per Cent. Coupon Bonds, dated April 1, 1903, maturing April 1, 1953, interest payable April and October at the Girard Trust Company, Philadelphia, secured by a certain mortgage dated April 1, 1903, executed and delivered by the Washington, Arlington & Falls Church Railway

Co. to the Merchants' Trust Company, Trustee, Philadelphia. Subject to call at 110 and interest on any interest date. No sinking fund is provided. The remaining \$100,000 of these bonds are reserved in the hands of the Trustee to retire the First Mortgage Bonds as above.

Same Company: \$1,000,000 authorized, \$602,000 issued, and \$490,000 sold and outstanding, First Consolidated Five Per Cent. Gold Coupon Bonds, dated September 1, 1908, and maturing September 1, 1958, interest payable March and September at the Girard Trust Company, Philadelphia, secured by a first consolidated Mortgage dated September 1, 1908, executed and delivered by the Washington, Arlington & Falls Church Railway Co. to the Girard Trust Company, Philadelphia, Trustee. No sinking fund is provided. Subject to call on any interest date at 105 and interest. Of these bonds, \$112,000 have been issued and are held in the treasury of the Washington-Virginia Railway Company subject to sale at the discretion of the Company, \$350,000 are reserved in the hands of the Trustee for redemption of prior liens, and \$48,000 are reserved in the hands of the Trustee for future extensions, improvements and acquisitions in accordance with the terms of the mortgage.

ORGANIZATION.

The title of the Company is WASHINGTON-VIRGINIA RAILWAY COMPANY.

The Company was chartered under the laws of Virginia June 22, 1910. On October 17, 1910, it was merged into and with the Washington, Alexandria & Mt. Vernon Railway Co., chartered under the laws of Virginia, 1890, and the Washington, Arlington & Falls Church Railway Co., chartered under the laws of Virginia, 1892, under the name of the WASHINGTON-VIRGINIA RAILWAY COMPANY.

SYSTEM.

The system comprises sixty miles of track, including main lines, double track and sidings, principally on its private right-of-way, and extends from Mt. Vernon to Bellmont, Fort Hunt, New Alexandria, Alexandria, Rosemont, St. Asaph, Braddock, St. Elmo, Four Mile Run, Luna Park, Virginia Highlands and Arlington Junction, crossing the Potomac River over the new Highway Bridge, through Potomac Park to 14th St., Washington, thence, passing the Bureau of Engraving and Printing, Washington Monument, new Agricultural Buildings and new City Hall or District Building, to the 12th St. and Pennsylvania Avenue Station; also a line from Arlington Junction to Rosslyn, passing the Government Experimental Farms and the East gates of Arlington National Cemetery; with another line from Fairfax Court through Oakton, Lewis, Vienna, Dunn Loring, West and East Falls Church, Highland Park, Lacey, Ballston, Clarendon and Hatfield, to Arlington Junction; and another line from Rosslyn to Nauck, passing Fort Myer and the National Cemetery at Arlington; also a line from Rosslyn to Clarendon, where it connects with the line from Fairfax Court House. It is the only electrical line connecting the above-named points with the City of Washington, landing its passengers in the heart of the Capital or at the Virginia end of the Aqueduct Bridge leading to West Washington.

All of the track is standard gauge, four feet, eight and one-half inches wide.

(For full description and physical condition of the Company's properties see Report of Engineer submitted herewith.)

FRANCHISES.

The franchises of the Washington-Virginia Railway Company comprise the following: Right to run over 12th and 14th Streets in the City of Washington,

through Potomac Park and over the Highway Bridge into Virginia, granted by various Acts of Congress, and practically perpetual; right to run through the Government reservations at Fort Myer and Arlington by license from the War Department, no time limit prescribed; ordinances to use in city of Alexandria, King, Cameron, Columbus, Payne, Fairfax, Tenth and Royal Streets, all of which are perpetual with the exception of about three blocks on Cameron Street, granted in 1907 for thirty years, and four blocks on Royal Street, which has expired and negotiations are now in progress for a renewal upon more favorable terms as to paving, etc.; right to run through the towns of Falls Church, Clarendon, Rosslyn, Fairfax and Vienna, all of which are perpetual; and elsewhere the Company is chartered to operate on its own right-of-way as stated above.

EARNINGS.

The earnings of the Merged Companies now comprised in the Washington-Virginia Railway Company for the year ending June 30, 1910, compared with the the same period of 1909, (condensed from Reports to the Interstate Commerce Commission), were as follows:

	1910	1909
Gross Earnings and other Income	\$505,923.45	\$439,550.66
Operating Expense	232,185.78	220,728.63
Gross Income	\$273,737.67	\$218,822.03
Bond Interest, Rentals and Taxes	190,271.26	159,628.84
Net Income	\$ 83,466.41	\$ 59,193.19

The earnings of the Merged Companies now comprised in the Washington-Virginia Railway Company for the nine months July, 1910, to March 31, 1911, were as follows:

Exhibits.

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Gross Earnings & Other Income.....	\$362,231.36
Operating Expense	180,475.68
Net earnings	181,755.68
Interest, Rentals & Taxes	136,301.45
Net Income 9 months	45,454.23

BALANCE SHEET, MARCH 31, 1911.

Assets

Assets.	
Property, Plant and Equipment.....	\$5,896,843.61
Stocks Owned	87,730.00
Bonds Owned	277,100.00
Supplies & Material on hand.....	18,191.48
Prepaid Accounts	3,563.39
Accounts Receivable	2,791.02
Cash	33,520.36
 Total Assets	 \$6,319,739.86

Liabilities.

Capital Stock: Preferred	1,000,000	
Common	1,378,300	2,378,300.00
Bonds of Merged Companies Outstanding.		3,402,000.00
Accounts Payable, current		31,161.03
Bond Interest Accrued, not due		19,541.66
Taxes Accrued, not due		21,684.87
Reserve for Accidents and Damages.....		4,944.05
Reserve for Replacements and Renewals ..		97,111.79
Surplus		350,000.00
Undivided Profits		14,966.46
 Total Liabilities		\$6,319,739.86

ACCOUNTING.

As an Interstate common-carrier the Company is under the jurisdiction of the Interstate Commerce Commission, and therefore its accounts are kept as prescribed by the Commission and operating reports are

filed annually with said Commissions. Similar reports are also filed with the State Corporation Commission of Virginia.

To provide for depreciation the Company set aside from its surplus over one hundred thousand dollars as a Reserve for Renewals and Replacement, and this reserve is being credited with regular monthly charges to Operating expense over and above ordinary repairs.

Offices: Principal, Mt. Vernon, Virginia.

General and Transfer, 1307 Real Estate Trust
Building, Philadelphia.

Washington, 1202 Pennsylvania Avenue,
Fiscal Year ends June 30.

Annual Meeting: Second Tuesday in February at
Mt. Vernon, Va.

Officers:—Clarence P. King, President; J. B. Hoellman, Secretary; W. H. Lawton, Treasurer and Comptroller; R. W. King, General Manager.

Directors:—Clarence P. King, Gardner L. Boothe, M. E. Church, A. G. Clapham, Norman Grey, David A. Howe, W. H. Lawton, Frederick Mertens, and Frederick H. Treat.

WASHINGTON-VIRGINIA RAILWAY COMPANY,
By CLARENCE P. KING, President.

The Stock List Committee recommend that the above described \$1,000,000 Preferred Stock and \$1,378,300 Common Stock be admitted to the regular list of the exchange.

HARRISON G. SEEGER, Chairman.

Approved by the Governing Committee May 15,
1911.

HORACE H. LEE, Secretary.

Exhibits.

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(Defendant's Exhibit 2 for identification, H. B. R., is as follows:)

(Letter Heads)

“WASHINGTON, ALEXANDRIA & MT. VERNON
RAILWAY CO.

1202 Pennsylvania Avenue.

R. W. King, General Manager.

WASHINGTON, D. C., Sept. 27, 1910.”

“WASHINGTON-VIRGINIA RAILWAY COM-
PANY,

F. H. TREAT, President.

J. B. HOELLMAN, Secretary, 1202 Penna. Ave, N. W.
W. H. LAWTON, Treasurer.

R. W. KING, General (HISTORIC ROUTE)
Manager.

WASHINGTON, D. C., Oct. 16, 1912.”

“WASHINGTON-VIRGINIA RAILWAY COM-
PANY,

1307 Real Estate Trust Building.
Office of

F. H. TREAT,
President.

Philadelphia.”

“WASHINGTON-VIRGINIA RAILWAY COM-
PANY,

1307 to 1310 REAL ESTATE TRUST BUILDING,
Office of the President.

Philadelphia, October 21, 1911.”

“WASHINGTON-VIRGINIA RAILWAY COM-
PANY,

CLARENCE P. KING, President. 1202 Penna. Ave. N. W.
J. B. HOELLMAN, Secretary. (HISTORIC ROUTE)

W. H. LAWTON, Treasurer.

R. W. KING, General Manager.

WASHINGTON, D. C.”

(Envelopes, containing the following in the upper left-hand corner):

"Return in 15 days to
 1307 Real Estate Trust Building (Stamp)
 Philadelphia, Pa."

"Return in 15 days to
 1307 Real Estate Trust Building (Stamp)
 Philadelphia, Pa."

"Return to
 1307 Real Estate Trust Building (Stamp)
 Philadelphia."

"Return to
 1307 Real Estate Trust Building,
 Philadelphia."

Re-direct-examination.

By MR. GLASGOW:

Q. The Washington-Virginia Railway Company had no name on the doors up there in the Real Estate Trust Building?

A. No, sir; I had no name upon the doors as President of the company.

Q. Do you know anything about how the Directory which has been presented to you was made up, how the information is furnished upon which that is made up?

A. No, I have not.

Q. The Philadelphia Directory?

A. No, sir; I had no knowledge.

Q. Do you know anything about how this is made up, or where the information comes from?

A. No, sir.

Q. Do you know how that name got in there?

A. No, sir.

Q. Is there any telephone under the name of the Washington-Virginia Railway Company?

A. No, sir.

Q. Did that company have any telephone contract in Philadelphia?

A. No, sir.

Q. At Mt. Vernon is not there an agent of the company residing there upon whom service of process may be had at its principal office at Mt. Vernon?

A. I believe there is; I was thinking of that, after Mr. Junkin asked the question. I think there is.

Q. He lives in the building you have referred to, does he not?

A. Yes, sir; but the matter to me was so trifling, that I overlooked telling Mr. Junkin. I think that is correct.

Re-cross-examination.

By MR. JUNKIN:

Q. What is his position? What is his occupation?

A. He has charge of the office down there, and he serves meals to people as well as sells pictures, pamphlets to tourists.

By MR. GLASGOW:

Q. He is the designated agent upon whom process may be served?

A. Yes.

By MR. JUNKIN:

Q. Is his business the business of the company, or a private company?

A. His business down there is his own private business, I believe.

Q. He is not paid a salary by the Company?

A. I think not.

By MR. GREY:

Q. Does not he sell tickets?

A. The treasurer of the company could tell you that.

Q. Does he not sell tickets?

A. Yes, I think he does.

By Mr. Bassett:

Q. He is the regular ticket agent of the company at that point, is he not?

A. Yes, sir.

By Mr. Gary:

Q. He is in the employ of the company to that extent, is he not?

A. I think he is; yes.

J. C. Freeland, having been duly sworn and examined, testified as follows:

By Mr. Glanow:

Q. Were you connected with the Washington-Virginia Railway Company?

A. Yes, sir.

Q. Were you so connected with the Company in June and July, 1912?

A. Yes, sir.

Q. How long have you been employed by that company?

A. I have been in the employ of the company some five years.

Q. Where do you reside?

A. Rosemont, Virginia.

Q. Where are you now engaged in business?

A. In Washington, D. C.

Q. What do you mean by saying you reside in Rosemont?

A. At the present time. In July, 1912, I lived in Philadelphia.

Q. You made your home here?

A. I did at that time.

Q. Are you a married man?

A. I am now. I was not then.

Q. You were out in June and July, 1865?
 A. Yes, sir.

Q. What do you mean by saying your home was in
 Washington in June and July?
 A. I say that is my home now.

Q. In June and July, 1865, you lived in Philadel-
 phia?
 A. Yes, in Philadelphia.

Q. In June and July?
 A. Yes, sir.

Q. Where did you live then?
 A. 1025 Market Street, Philadelphia, Pennsylvania.

Q. Where was your business that you conducted?
 Where was that?
 A. In the main part, 1027 Broad Street, Broad
 Street, and part of it in Washington.

Q. What was your business at 1027 Broad Street
 Broad Building? What did you do? Were you a book-
 keeper?
 A. Bookkeeper and accountant, and managing the
 business.

Q. Managing the business of the Washington Vir-
 ginia Railway Company. Is that right?
 A. Yes.

Q. Do you know what books were kept in June and
 July, 1865, in the office of the Washington Virginia
 Railway Company in Washington?
 A. Yes, sir.

Q. What were the books?
 A. The most books were kept there, showing the
 daily accounts, growing from the operation of the road,
 and the collection of all accounts due the said Washington
 Virginia Railway Company, and an accounting and
 showing the cost of operation, with all bills, the
 date they were paid, etc., a record of the time paid the
 employees, such as a pay-roll time record, a statement
 of all claims growing and accrued thereto, a book
 record of our losses, earnings and money disbursed, and

at Four Mile Run, Virginia, and Lacy, Virginia, there were kept different records covering the receipt and disbursement of materials and supplies.

Q. What books were kept in Philadelphia in June and July, 1912?

A. We kept the register.

Q. Register of what?

A. The register embraced the entry of receipts, as received from the Washington office; also an entry of all bills received from the Washington office, and the addition of such overhead expenses necessary to arrive at the final net earnings of the company.

Q. Who kept those books?

A. I did, under the direction of the treasurer.

Q. Was the stock transfer book kept there?

A. The stock transfer book and the stock ledger and the stock certificate books.

Q. Where did you get the information upon which to keep up the books that were kept in Philadelphia?

A. Washington, D. C., from the office of the operating company, from the office of the operation, 12th & Pennsylvania Avenue, Washington, D. C.

Q. Of the Washington-Virginia Railway Company?

A. Yes, sir.

Q. Was the stock of the company listed on the Exchange in Washington, as well as in Philadelphia?

A. Yes, sir.

Cross-examination.

By MR. JUNKIN:

Q. As I understand you, you made entries in those books, from time to time?

A. Yes.

Q. You gravitated between Washington and Philadelphia?

A. Yes.

Q. As your work required?

J. C. Freeland.

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A. Yes, sir.

Q. You made entries in the Washington books?

A. No entries in the Washington books; I simply supervised the entries that were made there, from time to time.

Q. You were thoroughly familiar with those entries?

A. Yes, sir.

Q. But you just made the entries in the Philadelphia books?

A. Yes.

Q. Did you keep any ledger of this company?

A. Yes, sir.

Q. You have not mentioned that, have you?

A. I might have overlooked that.

Q. Was that a regular ledger, in bookkeeping form?

A. That was a sundry ledger used in connection with the register.

Q. It was kept where?

A. Philadelphia.

Q. And that contained a record of all of the transactions of the company?

A. Yes. I might add a reservation to that, when I say all transactions of the company. It simply contained, for instance, in the daily receipts, we simply had a lump total. Those receipts were kept in Washington, sub-divided into different divisions, and lines of the company.

Q. But that ledger was a final resume and result of all the transactions of the company, both in the operation of the road and in the payment of its bills, in connection with the operation, and of the disbursements and receipts of the company from that source.

A. Yes.

Q. The usual ledger?

A. A sundry ledger.

Q. That is, the ledger as used by a company of that kind.

A. There are some slight differences, for the simple reason there were some sundry accounts receivable in Washington. Those things we kept no record of in Philadelphia. They collected them from the Washington office and simply reported them as collected.

Q. And do not the books in Philadelphia contain entries in regard to those collections and disbursements?

A. No, sir.

Q. What kind of sundry accounts?

A. For instance, we have rentals accruing for the rent of station privileges, things like that. They would simply send me a copy of the bill as rendered by the assistant general manager, and when he collected that, we would simply record that as a cash transaction.

Q. And the cash was disbursed down there?

A. No; the cash was deposited in the Commercial National Bank, to the credit of the company, under operating receipts.

Q. How was that accounted for when you came to make up your balance at the end of the year?

A. That was simply put on the register as accounts receivable, paid.

Q. And that particular item would not go through your sundry ledger?

A. No, sir.

Q. That would appear in the register from which you made up the final account. I take it the register that you kept in Philadelphia, was really a book superior in its result to the ledger? Is was a final book?

A. No, because all the information contained in that ledger, would have to come from the register.

By MR. GLASGOW:

Q. The register where?

A. From the Philadelphia office. The sundry ledger was simply a posting from the ledger. Everything went into the ledger, what was taken from the register,

and the register in turn was the basis of the information received from the operating office in Washington.

By Mr. JUNKIN:

Q. As I understand, the claims of which you have spoken, as being noted in the book in Washington, were settled from the Philadelphia office, were they not?

A. Not altogether, no. Mr. Travers, the claim agent, settled quite a few claims himself.

Q. Where did he get the cash from?

A. They have a petty account in Washington.

Q. Who draws the checks on that?

A. That is kept in the form of cash, usually. It is disbursed by the assistant general manager.

Q. Cash in the cash drawer, you mean?

A. Yes, cash in the safe.

Q. But a claim so settled would be a very small claim?

A. Yes.

Q. And whenever you had a large claim, it was settled through the Philadelphia office by check?

A. Yes; it was mailed to the Washington office, and settled by the claim agent there.

Q. When you say you got information from Washington, which you put in the Philadelphia books, you mean, as I understand you, in a large measure, that you went to Washington and obtained the information and brought it back to Philadelphia and put in the books?

A. No, not altogether. At the end of each day's business in Washington, they would send me a report, which was a summary of the business, simply a condensed summary, showing the cash receipts of the entire road for that one day.

Q. And disbursements, as well?

A. At the end of the month, they would send me bills duly approved by the assistant general manager, which consisted of materials and supplies purchased during the month, also pay-roll records, etc., and from such information I posted it direct into the register.

Q. You would convey that information, I assume, to the treasurer?

A. Yes, sir.

Q. In Philadelphia?

A. Yes.

Q. And to the president?

A. In the form of a report made to the Board of Directors, made by the treasurer.

Q. But you kept the treasurer and the president in Philadelphia fully advised from time to time, as to the operation of the company so reported to you?

A. Yes, as the occasion arose.

Q. The treasurer was there constantly in the office with you, was he not?

A. He was there for the most part of the time, yes.

Q. You and he had desks in the same room?

A. No, not in the same room.

Q. Adjoining rooms?

A. Adjoining rooms.

Q. How many rooms did you have in the Philadelphia office?

A. We had no special rooms as given over to us. I occupied a desk in connection with three others. The treasurer occupied a room in connection with one other, and the president occupied a room in connection with one other. We were shifted around from time to time as the occasion arose. We had no special space given over to us.

Q. You had occasion to conduct considerable correspondence, did you not, as to your duties?

A. I should say 99 per cent. of my correspondence, and likewise the president and treasurer, which I at one time wrote myself, therefore I am conversant with it, was between the operating office and our office, with reference to the information they sent us.

Q. That was not my question. I asked you whether you did have occasion to correspond. You say you did.

A. No; I myself had no correspondence outside.

Q. What stationery did you use? That is the question. The stationery produced here today?

A. Yes; Washington stationery. I myself used this stationery.

Q. In Philadelphia?

A. Yes, sir.

(The witness points to paper headed "Washington-Virginia Railway Company, 1202 Penna. Ave., N. W., Washington, D. C.")

By MR. JUNKIN:

Q. You mean you personally used that when you wrote letters from the Philadelphia office?

A. Yes.

Q. And when you wrote for the president or treasurer, you used their stationery, did you?

A. Yes.

Q. You used the Washington stationery from the Philadelphia office?

A. Yes, sir; at all times.

Q. For your own personal use?

A. Yes, sir.

Re-direct-examination.

By MR. GLASGOW:

Q. As I understand you, the register or ledger, the sundry ledger, you kept in Philadelphia, you entered in lump sum figures which were furnished by Washington?

A. Yes.

Q. And the details as to those lump sums were kept in the Washington office?

A. Yes, sir.

MR. GLASGOW: We close.

MR. JUNKIN: I call for the production of the treasurer.

MR. GLASGOW: The treasurer is here.

PLAINTIFF'S EVIDENCE.

WILLARD H. LAWTON, having been duly sworn and examined, testified as follows:

By Mr. JUNKIN:

Q. You were the treasurer of the Washington-Virginia Railway Company in June and July, 1912?

A. I was.

Q. You had been treasurer for that road for how long prior to that time?

A. From the time of its organization.

Q. That was in the Fall of 1910?

A. Yes.

Q. What had been your occupation prior to that?

A. I was treasurer of the Washington, Alexandria & Mt. Vernon Railway Company before that.

Q. For how many years?

A. I think it was 1906.

Q. Where were the offices of the Washington-Virginia Railway Company during your treasurership, the Philadelphia office, I mean?

A. The transfer office was at 1307 Real Estate Trust Building. We had no general office in Philadelphia.

Q. You were familiar with the stationery that was used in Philadelphia, were you not?

A. Yes, sir.

Q. The samples of which have been produced here today?

A. Yes.

Q. You conducted correspondence on that stationery, did you not?

A. Yes.

Q. You, as treasurer, kept the books, which the bookkeeper has just testified to, in the Philadelphia office, did you not?

A. Yes.

Q. And you caused the entries which he has testified to, to be made by him, under your direction, in those books?

A. I did.

Q. Where were the check books of the company kept?

A. 1307 Real Estate Trust Building.

Q. Both of the Washington bank account and of the Philadelphia bank accounts, and of the Alexandria bank accounts?

A. Yes, where we had check books. As a rule, we would use our own form of voucher.

Q. Where were the vouchers kept? In Philadelphia?

A. The blank forms were kept in Philadelphia.

Q. The blank forms were kept in Philadelphia?

A. Yes.

Q. The blank check books and the vouchers, where vouchers were used, were kept in Philadelphia?

A. Yes.

Q. And the blank forms?

A. Yes.

Q. Who filled up those checks from time to time, so far as the body of the same was concerned, and the signatures?

A. The bookkeeper.

Q. It was necessary for you, as treasurer, was it not, to sign each one of those voucher checks, as well as the check?

A. Yes.

Q. They were signed by you in Philadelphia, at the Philadelphia office?

A. As a rule, yes; they were sometimes sent elsewhere.

Q. By "elsewhere", what do you mean?

A. When I was away on my vacation, the checks would be frequently sent to me, to be signed.

Q. I assume you kept, or caused as treasurer to be kept, petty cash in the operating office in Washington,

and also possibly along the line of the road, from time to time?

A. Yes.

Q. For daily use?

A. Yes.

Q. That petty cash came from what source?

A. The checks were drawn on the Commercial National Bank of Washington.

Q. That is, drawn by you as treasurer?

A. Yes.

Q. How were the bills of the company paid?

A. Paid by check on the Commercial National Bank of Washington, as a rule.

Q. Do you recall no occasion when checks for bills of the company's general business were drawn upon banks in Philadelphia?

A. I cannot recall any specific instances. No, I cannot remember any specific instances.

Q. Apart from your recollection of specific instances, there were such instances, from time to time, were there not?

A. Occasionally.

Q. As the funds in the bank in Washington became more than were necessary for the current purposes of the company, as I understood the president, you would withdraw those funds to the Philadelphia depository?

A. Yes, sir.

Q. And used the Washington depository, so far as was possible, for the current operating expenses at all times?

A. I did.

Q. The interest was paid from the Philadelphia office and from the Philadelphia banks, was it not, the interest on the bond indebtedness, from time to time?

A. Sometimes from Philadelphia, sometimes from Washington, depending where we had the money at the time.

Q. You declared dividends on your stock from time to time?

A. Yes, sir.

Q. How were they paid? From what source?

A. Sometimes paid from Washington, and one occasion I remember, part of them were paid from Philadelphia.

Q. The checks were drawn where?

A. At the Philadelphia office.

Q. In the form of checks?

A. Yes.

Q. To whom did the acknowledgments for the same come?

A. There were no acknowledgments.

Q. Even for the dividends?

A. No.

Q. Where were the cancelled coupons that came from the mortgages, from time to time, when interest was paid, kept?

A. They were kept in the Philadelphia office, until each series was completed, and finally all sent down to Four Mile Run, to be placed on storage.

Q. That is, after they were cancelled and paid?

A. Yes.

By Mr. BARBOUR:

Q. Four Mile Run is in Virginia?

A. Yes, Four Mile Run is in Virginia.

By Mr. JUNKIN:

Q. The trustees under the mortgages, which were the mortgages given by this railroad, or by its underlying companies, except Falls Church Road, were trust companies in the city of Philadelphia, were they not?

A. Yes.

Q. Who was the trustee on the mortgage of the Falls Church road?

A. The first mortgage was C. A. Hinchman, Trustee, I believe.

Q. C. S. Hinchman?

A. C. S. Hinchman, and the second mortgage was some trust company in New York, I have forgotten the name, Mercantile, I think it was, and the third one, the first consolidated mortgage, was the Girard Trust Company of Philadelphia.

Q. That is, the first consolidated mortgage of the Washington-Virginia Railway Company?

A. No; it was on the Arlington & Falls Railroad.

Q. Who was the trustee under the Washington-Virginia Railway Company mortgage?

A. There is none.

Q. The trustee under the Washington, Alexandria & Mt. Vernon Railway Company is the Real Estate Trust Company of Philadelphia?

A. The Real Estate Trust Company of Philadelphia.

By MR. GLASOW:

Q. The question of mortgages is all stated in there, is it not? (Referring to Exhibit No. 1 for identification.)

A. Yes. It is Walter Hinchman. Not C. H. Hinchman.

Q. A correct statement as to mortgages occurs there in that paper, Exhibit No. 1 for identification?

A. Yes, that is right.

By MR. JUNKIN:

Q. The bookkeeper has testified that your stock was listed on the Washington Stock Exchange, as well as the Philadelphia Stock Exchange. Are you familiar with the listing of that stock in Washington?

A. No, I am not.

MR. JUNKIN: I call upon the defendant to produce the same papers as were called for with reference to the listing of the stock upon the Philadelphia Exchange.

MR. GLASOW: We cannot do that today.

MR. JUNKIN: You can send it to the stenographer and he will put it in.

MR. GLASOW: It will probably take us a day or two to get that.

By MR. JUNKIN:

Q. During your previous years, of your treasurership of the Washington, Alexandria & Mt. Vernon Railway Company, prior to 1910, it also maintained an office in Philadelphia, did it not, in the same room?

A. Yes.

Q. And it kept there the same character of books, did it?

A. It did, yes.

Q. And the same character of work was done there as was done by the Washington-Virginia Railway Company?

A. Yes.

Q. Mr. Clarence P. King was the president of the road at that time, was he not?

A. He was.

Q. Clarence P. King?

A. Yes.

Q. And was there any change in what was done with reference to the books the transaction of business, and so forth, in the situation of the Washington, Alexandria & Mt. Vernon Railway Company, after the consolidation took place with the Washington-Virginia Railway Company? Was the same character of work carried on?

A. No change.

Q. Prior to the consolidation, it was substantially the same as it was afterwards?

A. Yes, sir.

By MR. GLASOW:

Q. The Washington-Virginia Railway Company never issued any mortgage at all, did it?

A. None.

Q. No bonds outstanding?

A. No bonds outstanding.

Q. The by-laws of the company, Section 5 of Article IV, provide, with reference to the books: "He shall keep such books as pertinent to the office of President, and also the stock certificate books, stock ledger, and stock transfer books, unless their custody be otherwise assigned by the President and the Board of Directors." Is that the provision of the by-laws under which you keep the books at Philadelphia?

A. Yes, sir.

By Mr. JONES:

Q. Where is the seal of the company kept?

A. Now?

Q. Where was it kept in June, 1901 and 1902?

A. 1907 Total Safety Trust Building.

Q. And had been kept prior to that time?

A. Yes, sir.

By Mr. COOK:

Q. It had been taken over to Washington and used there from time to time, had it not?

A. Yes, sir.

By Mr. BURR:

Q. You took it with you whenever you had occasion to use it?

A. I did, sir.

Q. And in using it, you kept it home with your books?

A. Yes.

By Mr. FRENCH:

Q. I call the attention of the witness to Section 5 of Article IV of the by-laws, as to the duties of President, and I ask you if this is one of the by-laws of the company: "President. He shall have the custody of

the end of the company.¹² What is part of one of the by-laws, do I ask?

A. This:

Approved.

Depositions are taken of himself, and with the written advice of Mr. John Foster, President, this day, at his office, 201 Franklin Building, Philadelphia, Pa., on March 10th, 1911, at 10 A.M.

Present:

George G. Gleason, Esq., for the plaintiff.

Thomas Dyer, Esq., and

W. E. Gleason, Esq., Esq., of counsel for the defendant.

James H. Sawyer, having been duly sworn, was examined and testified as follows:

(1) Q. Who is the Plaintiff?

A. I am authorized by Mr. G. G. Gleason, president of the City and National Bank, to act as attorney for the Plaintiff, and I reside at 191 Franklin Street.

Q. Did you have anything to do with the applying and obtaining the name for the Plaintiff and the office at the First National Bank Building, Franklin Avenue of the First National Bank, Philadelphia, in the year 1900, 1901 or 1902?

A. This name the office of the First National Bank Company on the ground floor.

Q. Who, the name is the Plaintiff?

A. This. I go there often to office and have all the

names that are given to me, individuals and companies, and so forth, for the directory.

Q. I call your attention to three books bound in red; taking this one first, what is that book?

A. That is the 1911 edition of the General City Directory.

Q. That is of the City Directory of the City of Philadelphia?

A. Yes.

Q. And upon page 1940 of that book under the heading of the column of "Washington" I call your attention to an office in Real Estate Trust Building, and ask you what you find there on that column, what name you find there?

A. Washington-Virginia Railway Company, 1307 Real Estate Trust Building.

Q. That is 1911?

A. Yes.

Q. What is that book (showing another book to witness)?

A. The 1912 edition of the General Directory, city of Philadelphia.

Q. On column 1957 of this book, what do you find with reference to the same company, under the title "Washington"?

A. Listed under the same heading, Washington-Virginia Railway Company, 1307 Real Estate Trust Building.

Q. And this small book, what is that?

A. That is the General Business and Professional Directory of Philadelphia for 1912.

Q. This last book (showing book to witness) is an itemized business directory?

A. An itemized business and professional directory of the City of Philadelphia.

Q. Prepared by that company?

A. Prepared by C. E. Howe Company; yes, sir.

Q. Under the title of Railroads in that book, on page 1975, do you find anything with reference to the same company?

A. Washington-Virginia Railroad Company, 1307 Real Estate Trust Building.

Q. What can you say as to these books being the business and general directories of the City of Philadelphia?

(Objected to by Mr. Glasgow as irrelevant.)

Q. Are you familiar with any other directories in this city?

A. No, sir.

Q. Is there any other general business directory in the City of Philadelphia or any directory of individuals published in this city?

A. Not to my knowledge.

Q. Has there been for the last few years any other such book?

A. Not since 1907, January, 1907, Gopsill's City Directory went out of business in January, 1907.

Q. To your knowledge of that business or trade, is there any other business or general directory of the City of Philadelphia published, and has there been since 1910 in the City of Philadelphia?

A. No, sir; not that I am aware of.

Q. As I understand you, part of your special duty for the Howe Company who publish this directory, has been for some years past the obtaining of the names of the tenants in the Real Estate Trust Company Building at Broad and Chestnut Streets?

A. And soliciting advertisements also as well.

(Question objected to by Mr. Glasgow.)

By MR. GLASGOW:

Q. Do you know whether this company was a tenant of the Real Estate Trust Company?

A. Washington-Virginia Company?

Q. Yes.

A. I do not.

By Mr. JUNKIN:

Q. I am not asking that—

(Mr. Junkin asks Mr. William H. Lawton, Treasurer of the Washington-Virginia Railway Company, to step out so that the witness can see him.)

Q. Do you recall this gentleman whom I just asked to come into your sight?

A. Yes, sir; I remember meeting him on one occasion in that office.

Q. Do you know his name or his occupation?

A. I do not, sir.

Q. How did you come to meet him?

A. I inquired for the names and the information that was to be entered into the directory and he came out in response to the name; I believe I inquired among the girls there and stenographers.

Q. And this gentleman came into your presence and you had a conversation with him?

A. Regarding information for the directory; yes.

Q. Do you recall in any detail what that conversation was?

A. I really could not tell you.

Q. Is it or not a fact that in consequence of that conversation, whatever it was, that in the directory appeared this name?

(Objected to by Mr. Glasgow as improper.)

A. I could not say.

Q. What can you say about the name appearing in the directory?

A. The name was given to some solicitor of the company, possibly myself. I have been taking information there for four consecutive years, and we take all the names that are given to us. I could not say who

gave me that particular name, if it was given to me. You understand we canvass the building and then we have other men go through it occasionally, what we call dispatchers.

Q. What is their duty?

A. If something has appeared in a previous year's edition and nothing has been brought in for this year, we send to see if he is there and if they say yes, we put it in.

Q. What was your special duty; are you the first man?

A. No; the first man is the advertising agent. He goes through the building and solicits the larger contracts. After that, I have for the past four years gone through the building and taken all the names of those who were in business or in professions or of those who were given to me.

Q. You mean you took the names from the different offices?

A. Yes.

Q. And of persons in the office?

A. From persons supposed to be authorized to—

Q. Give you the information?

A. Yes, sir.

WILLARD H. LAWTON, recalled.

By MR. GLASGOW:

Q. When were you treasurer of the Washington-Virginia Railway Company?

A. From the time the company was organized by merger with the Washington, Alexandria and Mount Vernon Company.

Q. When was that?

A. I cannot remember the date.

Q. What year; Mr. Junkin says it was in the Spring of 1910?

A. Yes, 1910; that is right.

Q. Were you treasurer of the Washington-Virginia Railway Company in 1911 and 1912?

A. 1911 and 1912.

By MR. JUNKIN:

Q. And your desk was in rooms 1307 Real Estate Trust Building during those years?

A. My office was, yes.

By MR. GLASGOW:

Q. I understood that the Washington-Virginia Railway was not in existence after November 30th, 1911?

A. 1912. I made a mistake in my figuring.

Q. 1912?

A. Yes, last year.

Mr. Junkin offers in evidence the three directories identified by the witness and from which he testified.

MR. GLASGOW: This offer is objected to on the ground that there has been no proof that the entry therein was made with the approval or knowledge of the Washington-Virginia Railway Company or any of its authorized agents or officers, and upon the further ground that it is irrelevant upon the issues joined in this case and otherwise improper.

Cross-examination.

By MR. GLASGOW:

Q. As I understand you, you do not know how those names got in that book at all, I mean of your knowledge?

A. Those particular names?

Q. Yes.

A. I could not swear to it.

Q. You do not know, that is the reason you cannot swear, is it not?

A. I do not know how those particular names got in there. Someone brought them in.

Q. Somebody?

A. Yes; possibly myself.

Q. But you have no recollection of it?

A. None whatever.

WILLARD H. LAWTON, recalled.

By MR. JUNKIN:

Q. You were the treasurer of the Washington-Virginia Railway Company in 1911 and 1912?

A. Yes.

Q. Do you recall a conversation with this gentleman who has just testified, Mr. Kirwin?

A. No, I do not.

Q. Can you or not say whether you did have a conversation with a representative of the directory as to the name to go into the directors from that office?

A. I do not recall ever having it, no.

Q. You would not say you did not have one?

A. No, I would not say I did not, because it may have been three or four years ago.

MR. JUNKIN: I offer in evidence the response of Mr. Grey, representing the defendant, to the call made at the last meeting for the papers which passed between the defendant and the Washington Stock Exchange with reference to the listing of the stock of the Washington-Virginia Railway Company upon the Washington Stock Exchange, Mr. Grey's letter being dated February 28th, 1913, with the attached copies of letters passing from Allan E. Walker to W. H. Lawton, December 3rd, 1910, and

W. H. Lawton, Treasurer, to Secretary of the Washington Stock Exchange November 30th, 1910.

(Objected to by Mr. Glasgow on the ground that they are irrelevant.)

MR. JUNKIN: I also offer further call from myself to Mr. Grey, as counsel of the defendant company, in the form of a letter to Mr. Grey from myself dated March 1st, 1913.

(Objected to by Mr. Glasgow on the ground that statements by Mr. Junkin cannot be put into the record in this form, and on the ground that the letter is irrelevant.)

MR. JUNKIN: I also offer in evidence letter of March 10th, 1913, from Mr. Grey to Mr. Junkin in response to such second call, together with letters attached thereto from C. P. King, President of the Washington, Alexandria and Mount Vernon Railway Company, to the Secretary of the Washington Stock Exchange; letter from the Secretary of the Washington Stock Exchange to C. P. King, dated January 8th, 1907; letter from John W. Pittock to Benjamin Woodruff, Secretary of the Washington Stock Exchange, dated January 18th, 1907; letter from Benjamin Woodruff, Secretary of the Washington Stock Exchange, to John W. Pittock, Treasurer of the Washington, Alexandria and Mount Vernon Railway, January 22nd, 1907; letter from John W. Pittock, Secretary, to Benjamin Woodruff, Secretary of the Washington Stock Exchange, dated January 23rd, 1907; letter from Benjamin Woodruff, Esq., to John W. Pittock, Secretary of the Washington, Alexandria and Mount Vernon Railway Company, dated February 4th, 1907; letter dated December 15th, 1910, from _____, Treasurer, to Allan E. Walker, Secretary of the Washington Stock Exchange.

MR. GLASGOW: Defendant objects to the in-

introduction of these papers, first to the letter of C. P. King, President, Washington, Alexandria and Mount Vernon Railway Company, to the Secretary of the Washington Stock Exchange, dated December 26th, 1906, on the ground that it does not refer to the defendant Company, which was not in existence at that time, and further that the letter is irrelevant upon the issue joined in this case;

2nd, objection is made to the letter of January 8th, from Benjamin Woodruff, Secretary, to Clarence P. King, President of the Washington, Alexandria and Mount Vernon Railway Company, as this letter has no reference to the Defendant Company and is also irrelevant;

Objection is also made to the letter of January 18th, 1907, from John W. Pittock, Secretary, to Benjamin Woodruff, Secretary of Washington Stock Exchange, as this is a letter from the Secretary of the Washington, Alexandria and Mount Vernon Railway Company, to the Secretary of the Washington Stock Exchange, and does not refer to the Defendant Company and is irrelevant.

Objection is also made to the letter of January 22nd, 1907, from Benjamin Woodruff, Secretary, to John W. Pittock, Treasurer Washington, Alexandria and Mount Vernon Railway Company, on the ground that this letter does not refer to the Defendant Company, and is irrelevant;

The same objection is made to the letter of John W. Pittock, Secretary, to Benjamin Woodruff, Secretary of the Washington Stock Exchange of January 23rd, 1907, and to the letter of February 4th, 1907, from Benjamin Woodruff, Secretary of the Washington Stock Exchange, to John W. Pittock, Treasurer of the Washington, Alexandria and Mount Vernon Railway Company;

Objection is also made to all of these letters on

the ground that the Defendant Company was not in existence at the time they were written;

Objection is also made to the letter of December 15th, 1910, from _____, Treasurer of the Washington-Virginia Railway Company, to Mr. Allan E. Walker, Secretary of the Washington Stock Exchange, on the ground that the letter has no reference to the issues involved in this case, and is irrelevant and otherwise improper.

MR. JUNKIN: I also offer in evidence the statement of plaintiff's claim filed in the cause at issue.

Defendant objects to the introduction of the statement of claim on the ground that it is not proper evidence to consider on the issue joined herein.

MR. JUNKIN: I also offer in evidence a copy certified from the office of the Secretary of the Commonwealth of Virginia, of the mergers Charter of the Washington-Virginia Railway Company, Washington, Arlington and Falls Church Railway Company, and Washington, Alexandria and Mount Vernon Railway Company under the name of Washington-Virginia Railway Company, and recorded in the office of the Secretary of the State of Virginia, October 17th, 1910, which is Exhibit A, attached to the statement of claim.

Defendant objects to the introduction of this paper as being irrelevant on the issue joined, but does not object to Mr. Junkin providing what he states to be a copy of the original paper, provided that before its transcript by the stenographer here, the original will be produced to the stenographer, to be compared and copied on the record, which Mr. Junkin agrees to do; but the defendant does not by this waive, but insists upon his objection that the paper is irrelevant and improper evidence in this case.

The letters and papers offered in evidence read as follows:

(Letter-head of Grey & Archer.)

"Camden, N. J., February 28th, 1913.

Joseph deF. Junkin, Esq.,

Real Estate Trust Bldg.,

Philadelphia, Pa.

Real Estate Trust Co. vs.

Washington-Va. Ry. Co.

Dear Mr. Junkin:—

I enclose you herewith exactly as received from my client, Washington-Virginia Railway Co., copy of letter dated November 30, 1910, addressed to Secretary, Washington Stock Exchange, signed, W. H. Lawton, Treasurer, being the application (so I am informed) of that Company to that Exchange for listing of its stock in Washington.

I also enclose you copy, as received, of letter dated December 3, 1910, addressed to W. H. Lawton, Treasurer, etc., signed Allan E. Walker, Sec.

I am also informed that is all the correspondence on the subject of listing the stock in Washington.

Please advise me whether you desire to take any further testimony in this case. I will also confer with my associates and advise you in a few days whether our testimony is closed.

Yours very truly,

(Sgd.) Norman Grey."

Office of the Secretary.

THE WASHINGTON STOCK EXCHANGE,

Washington, D. C., Dec. 3, 1910.

Mr. W. H. Lawton,

Treas. Wash. & Va. Railway Co.,

1307-1310 Real Estate Trust Building,

Philadelphia, Pa.

Dear Sir:

Replying to yours of the 30th ult., concerning list-

ing the common and preferred stock of your Company on the Washington Stock Exchange, I beg to state that the fee for making such listing, is \$100. for each stock, making a total of \$200. This amount must accompany the application for listing.

The information contained in your letter, seems to be sufficient except that the rules of the Exchange, require that there shall be at least twenty-five stockholders holding twenty-five or more shares of stock each, and the statement of the authority under which your corporation exists, a list of officers and directors and if there be any outstanding bonds, the amount and character thereof. Otherwise, the information contained in your letter seems to cover the requirements.

Yours very truly,

(Signed) Allan E. Walker,

Sec.

November 30, 1910.

Secretary, Washington Stock Exchange,
Washington, D. C.

Dear Sir:

The stock of the Washington, Alexandria & Mt. Vernon Ry. Co. is now being canceled and new stock of the Washington-Virginia Railway Company issued in exchange, for the reason that the said Mt. Vernon Company has been merged with and into the Washington-Virginia Railway Company. We therefore ask that you discontinue the Washington, Alexandria & Mt. Vernon Ry. Co. stock from your list and substitute the Washington-Virginia Railway Company common and preferred stock, as follows:

Common Stock. 13,783 shares of the par value of \$100 each (or \$1,378,300) out of an authorized issue of 20,000 shares of the par value of \$2,000,000.

Preferred Stock: 10,000 shares of the par value of \$100 each (\$1,000,000) being the total amount authorized.

The preferred stock is cumulative at the rate of 3% for the year ending November 1st, 1911, 4% for the year ending November 1st, 1912, and 5% per annum thereafter; payable semi-annually, May and November.

The preferred stock certificates also contain a provision that the said stock shall share with the common stock in any dividends declared over and above 5%, up to 7%.

Am enclosing the following certificates of stock, duly canceled, as samples:

No. A 68 Common Stock, for less than 100 shares;
 " B 110 " " " 100 shares;
 " C 43 Preferred Stock, for less than 100
 shares;
 " D 22 " " " 100 shares,

showing the provisions of both kinds of stock. You will observe that all of the stock requires the registration of the Girard Trust Company, of Philadelphia, Registrar.

Please advise if the above contains sufficient information, and whether the said stock of the Washington-Virginia Railway Company will be listed on your exchange.

Yours very truly,

(Signed) W. H. Lawton,

Treasurer.

March 1st, 1913.

THE REAL ESTATE TRUST CO. vs. WASHINGTON-VIRGINIA RWY. CO.

Norman Grey, Esquire,
 104 Market Street,
 Camden, N. J.

My dear Mr. Grey:—

I am in receipt of your favor of February 28th in the above matter, enclosing copies of certain correspondence between Mr. Lawton, as Treasurer of the

Washington-Virginia Railway Company, and the Washington Stock Exchange.

It is manifest from Mr. Lawton's letter that the Stock of the Washington-Virginia Railway Company was listed upon the Washington Stock Exchange as being Stock exchanged for the Stock of the Washington, Alexandria & Mt. Vernon Railway Company, which had been previously listed upon the Exchange under an application made by such Company, and that the real application under which the Washington-Virginia Railway Company's Stock became upon such Exchange was that made by the Washington, Alexandria & Mt. Vernon Railway Company for the listing of its Stock.

Mr. Lawton says in his letter of November 30th, 1910, to the Secretary of the Washington Stock Exchange:

“The Stock of the Washington, Alexandria & Mt. Vernon Railway Company is now being cancelled, and new Stock of the Washington-Virginia Railway Company issued in exchange, for the reason that the said Mt. Vernon Company has been merged with and into the Washington-Virginia Railway Company. We, therefore, ask that you discontinue the Washington, Alexandria & Mt. Vernon Railway Company Stock from your list, and substitute the Washington-Virginia Railway Company Common and Preferred Stock as follows:”

The reply of the Secretary of the Washington Stock Exchange states that the rules of the Exchange require that there should be also filed “the statement of the authority under which your Corporation exists; a list of the Officers and Directors, and, if there be any outstanding Bonds, the amount and character thereof. Otherwise, the information contained in your letter seems to cover the requirements.”

This latter letter would seem to indicate that there must have been some further letter sent by Mr. Lawton

to the Washington Stock Exchange before the substituted Stock of the Washington-Virginia Railway Company could have been listed thereon in lieu of the Stock of the Washington, Alexandria & Mt. Vernon Railway Company.

I would, therefore, be obliged to you if you would see if Mr. Lawton is not mistaken in stating that these two letters are all the correspondence with reference to the subject of listing the Stock in Washington; and I would also be obliged to you if you would produce, on my call, the application made for the listing of the Washington, Alexandria & Mt. Vernon Railway Company Stock to the Washington Stock Exchange, for which the Washington-Virginia Railway Company's Stock was substituted, as set forth in the correspondence produced.

Yours truly,
(Signed) Joseph deF. Junkin.

(Letter-head of Grey & Archer.)

Camden, N. J., March 10th, 1913.

Joseph deF. Junkin, Esq.,
Real Estate Trust Bldg.,
Philadelphia, Pa.

Dear Mr. Junkin:—

I enclose you herewith what I am informed are copies of letters as follows:

Letter dated December 26th, 1906, to Secretary Wash. Stock Exchange, signed by C. P. King, Pres.

Letter dated Jany. 8th, 1907, to Clarence P. King, Pres. Wash. Mt. Vernon & Alexandria Ry. Co., signed Benj. Woodruff, Secretary.

Letter dated January 18, 1907, to Benj. Woodruff, Secty. Washington Stock Exchange, signed by John W. Pittock, Secty.

Letter dated January 22, 1907, to John W. Pittock, Treas. Wash. Alexandria & Mt. Vernon Ry. Co. signed Benj. Woodruff, Secretary.

Letter dated January 23, 1907, to Benj. Woodruff, Secty. Washington Stock Exchange, signed John W. Pittock, Secty.

Letter dated February 4th, 1907, to John W. Pittock, Treas. Wash. Alex. & Mt. Vernon Ry. Co., signed Benj. Woodruff, Secty.

Letter dated December 15th, 1910, to Allan E. Walker, Secty. Washington Stock Exchange, no signature.

My clients advise me that these are all the letters and papers on the subject. Trusting this is what you were asking for, I am, Yours truly,

(Signed) Norman Grey.

THE WASHINGTON STOCK ECHANGE,

Washington, D. C., Jany. 8th, 1907.

Mr. Clarence P. King,

Pres't Wash'n Mt. Vernon & Alexandria Ry.

Room 1309, Real Estate Building,
Philadelphia, Pa.

Dear Sir:

Replying to your favor of Dec. 26th in which you apply to the Washington Stock Exchange to list 1,800,000, 1st mortgage 5% bonds of your company, I beg to say that I am instructed by the Board of Governors to inform you that they do not see the advantage of listing these bonds, so few of which are held in Washington, unless you should agree to also list your stock issue and any other securities which may now be outstanding.

If you desire to comply with this request or suggestion I shall be pleased to again bring the matter to the attention of the exchange.

Yours very truly,

(Signed) BENJ. WOODRUFF,
Secretary.

WASHINGTON, ALEXANDRIA & MT. VERNON
RAILWAY CO.

January 18, 1907.

Mr. Benj. Woodruff, Sec'y,
The Washington Stock Exchange,
Washington, D. C.

Dear Sir:

Supplementing the letter written by our President to you on December 26th, 1906, asking you to list the bonds of the Washington, Alexandria & Mt. Vernon Railway Company, we now beg to reply to you to also list the \$1,500,000 Capital Stock of the Washington, Alexandria & Mt. Vernon Railway Company in addition. The letter accompanying the application for the bonds describes the property entirely, and the bonds, together with this stock, are the only securities outstanding of this road. We herewith enclose our check for \$200, to pay the fees required by your Exchange for listing the same.

Yours very truly,
(Signed) John W. Pittock, Secretary.

THE WASHINGTON STOCK EXCHANGE,

Washington, D. C., January 22, 1907.

Mr. John W. Pittock, Treasurer,
Wash. Alexandria and Mt. Vernon Ry. Co.,
Philadelphia, Pa.

Dear Sir:

Acknowledging receipt of your esteemed favor of the 18th inst., I beg to advise that the only additional information desired by this exchange is the approximate number of stockholders in your company, which, according to the by-laws must be at least twenty-five. Kindly furnish me this information at your early convenience and then we will be in a position to vote upon your application at the next meeting of the Board of Governors, when I have every reason to suppose they will act favorably.

I also beg to acknowledge receipt of your check for \$200.

Yours very truly,
 (Signed) BENJ. WOODRUFF,
 Secretary.

WASHINGTON, ALEXANDRIA & MT. VERNON
 RAILWAY CO.

January 23, 1907.

Mr. Benj. Woodruff, Sec'y.,
 The Washington Stock Exchange,
 Washington, D. C.

Dear Sir:

Your valued favor of January 22nd received, and note what you state as to information regarding approximate number of stockholders of our Company. On December 31st, 1906, we had 76 stockholders registered on our books.

Trusting this will be satisfactory,
 Yours very respectfully,
 (Signed) John W. Pittock, Secretary.

THE WASHINGTON STOCK EXCHANGE.

Washington, D. C., Feby. 4th, 1907.

Mr. John W. Pittock, Treasurer,
 Washington Alex. & Mt. V. R'y Co.,
 Real Estate Trust Bldg., Phila., Pa.

Dear Sir:

I have the honor to inform you that the Washington Stock Exchange has this day listed \$1,800,000, 1st mortgage 5% bonds and \$1,500,000 capital stock of the Washington, Alexandria and Mt. Vernon Railway Co.,

Yours very truly,
 (Signed) BENJ. WOODRUFF,
 Secretary.

Dec. 15, 1910.

Mr. Allan E. Walker, Secretary,
 Washington Stock Exchange,
 Washington, D. C.

Dear Sir:

Replying to your favor of the 3rd inst., I enclose herewith check for \$200. to cover fees for listing the Common and Preferred stock of the Washington-Virginia Railway Company on your exchange.

Complying with your request for further details, I would state as follows:

1. The number of stockholders at this date is 89.
2. The Company was chartered under the laws of the State of Virginia in July, 1910.
3. The officers and directors of the Company are as follows:

President,	Clarence P. King,
Secretary,	Jos. B. Hoellman,
Treasurer,	Willard H. Lawton,
General Mgr.,	Richard W. King.
Directors:	Clarence P. King,
	A. G. Clapham,
	Gardner L. Boothe,
	Frederick H. Treat,
	Norman Grey,
	David A. Howe,
	M. E. Church,
	Frederick Mertens,
	Willard H. Lawton.

4. The company has issued on bonds of its own but under the agreement by which it was merged with the former Washington, Alexandria & Mt. Vernon Railway Co., and the Washington, Arlington & Falls Church Railway Co., it has assumed liability for the following issues of those companies, viz:

Authorized Outstanding

1st Mort. 5% Gold Bonds of the Washington, Alexandria & Mt. Vernon Ry. Co., Int. Mch. & Sept., (of which \$100,000 are held in the Company's Treasury),	\$2,500,000	\$2,450,000
1st Mtg. 6% Gold Bonds of the Washington, Arlington & Falls Church Ry. Co., Int. Jan. & July,	100,000	100,000
2nd Mort. 5% Gold Bonds of the Washington, Arlington & Falls Church Ry. Co., Int. Apl. & Oct., of which \$100,000 are held by the Trustee for redemption of the 1st Mort. bonds,	350,000	250,000
1st Consolidated 5% Gold Bonds of the Washington, Arlington & Falls Church Ry. Co., Int. Meh. & Sept., of which \$350,000 are held by the Trustee for redemption of the outstanding 1st and 2nd Mort. bonds,	1,000,000	602,000
(Of the \$602,000 outstanding, the Company holds in its treasury \$202,000.)		

Total Bonds Outstanding, \$3,402,000

Trusting the above information will prove satisfactory, I am,

Yours very truly,

Treasurer.

WASHINGTON, ALEXANDRIA & MT. VERNON
RAILWAY COMPANY.

December 26, 1906.

Secretary, Washington Stock Exchange,
Washington, D. C.

Dear Sir:

We beg to apply to the Washington Stock Ex-

change to list thereon \$1,800,000 First Mortgage Five Per Cent. bonds of the Washington, Alexandria & Mt. Vernon Railway Co. Interest periods March and September; dated March 1st, 1905, due March 1st, 1955. Coupon bonds with privilege of registering the principal.

On February 18, 1890, the Company was incorporated under the laws of Virginia as the Alexandria & Fairfax Passenger Railway Co. The charter was amended and the same changed on February 17, 1902, to Washington, Alexandria & Mt. Vernon Elec. Railway, and on February 23, 1905, the charter was again amended and the name changed to Washington, Alexandria & Mt. Vernon Railway Co.

The capital stock authorized and outstanding is \$1,500,000, par value \$100 per share. Bonds authorized \$2,500,000. Issued and outstanding \$1,800,000. \$700,000 reserved in the treasury for extensions, improvements, etc., at 80% of the actual cost thereof. \$1,500,000 of these bonds were placed in the market early in the year 1905 and sold at prices between 98 and 100 and interest, since which time \$300,000 additional bonds have been issued from treasury for extensions, new rolling stock, car barn, additions to power plant, and betterments, under the terms of the Mortgage; these bonds being sold to Messrs. Graham & Co., Philadelphia.

The Washington, Alexandria & Mt. Vernon Railway Co. comprises some 29 miles of track, connecting Washington and Mt. Vernon, double track between Washington and Alexandria and single track between Alexandria and Mt. Vernon, with branch line from Arlington Junction to Rosslyn, Va.

The officers of the Company, are,

Clarence P. King, President,
H. H. Pearson, Jr., Vice-President.
J. W. Pittock, Sec'y and Treas.
W. H. Lawton, Ass't Treas.

The Directors of the Company are,

John Cassels,	F. H. Treat
Frederick Mertens	Park Agnew
S. W. Ffoulkes	
H. S. Graham	
H. H. Pearson, Jr.	
C. P. King	
E. H. Butler	

The principal office of the Company is located at Mt. Vernon, Va., with branch offices in Washington and Philadelphia.

The bonds were principally sold in Philadelphia, Baltimore and throughout the eastern section of Pennsylvania.

Very truly yours,

(Signed) C. P. KING,
President.

EXHIBIT A.

THIS IS TO CERTIFY that a duly called meeting of the stockholders of the Washington-Virginia Railway Company was held at the principal office of said Company in the town of Falls Church, Fairfax County, Virginia, at 3 o'clock P. M., on Wednesday, October 12, 1910, said meeting having been called for the purpose of taking into consideration and voting on a joint agreement entered into by the Boards of Directors of the Washington-Virginia Railway Company, the Washington, Arlington & Falls Church Railway Company, and the Washington, Alexandria & Mt. Vernon Railway Company, for the merger or consolidation of said corporations, a copy of said joint agreement being attached hereto.

This is further to certify that due notice of the time, place and general object of said meeting was given to the stockholders by publication, at least six times a week for two successive weeks, in the Alexandria Gazette, a newspaper published in the City of Alexandria,

Virginia, said City being near the place where the principal office in this State of the said Corporation is located (no daily newspaper being published in the County of Fairfax, Virginia), and by mailing a copy of such notice, at least ten days prior to such meeting, to the last known post office address of each of the stockholders of record.

This is further to certify that at said meeting there were represented, either in person or by duly executed proxy, 10,000 shares of stock out of a total of 10,000 shares issued and outstanding, and that after due consideration of said joint agreement which was submitted to the stockholders a vote by ballot was taken thereon for the adoption or rejection of the same, and that a majority of all votes cast were in favor of said agreement, consolidation and merger.

IN TESTIMONY WHEREOF M. E. Church, the President of the said Washington-Virginia Railway Company, has hereunto subscribed his name and affixed the corporate seal of said Washington-Virginia Railway Company hereto, on the 12th day of October, 1910, and F. E. Parker, the Secretary of the said Washington-Virginia Railway Company, has duly attested the same.

M. E. Church,
President of Washington-
Virginia Railway Company.

(Seal)

Attest:

F. E. Parker,
Secretary of Washington-
Virginia Railway Company.

State of Virginia,
County of Fairfax, To-Wit.

I, G. T. Mankin, a Notary Public in and for the State and County aforesaid, do hereby certify that M. E. Church and F. E. Parker, the President and Secre-

tary respectively of the Washington-Virginia Railway Company, whose names are signed to the writing foregoing and hereunto annexed, bearing date on the 12th day of October, 1910, have acknowledged the same before me in my State and County aforesaid.

And I do further certify that each of them acknowledged that the seal affixed thereto is the corporate seal of the said Washington-Virginia Railway Company.

Given under my hand this 12th day of October, 1910.

My commission as Notary expires Nov. 4, 1912.

G. T. Mankin, Notary Public.

THIS IS TO CERTIFY that a duly called meeting of the stockholders of the Washington, Arlington & Falls Church Railway Company was held at the principal office of said Company at Mt. Vernon, Fairfax County, Virginia, on Wednesday, October 12, 1910, at 2:30 o'clock P. M., said meeting having been called for the purpose of taking into consideration and voting on a joint agreement entered into by the Boards of Directors of the Washington-Virginia Railway Company, the Washington, Arlington & Falls Church Railway Company, and the Washington, Alexandria & Mt. Vernon Railway Company for the merger or consolidation of said corporations, a copy of said joint agreement being attached hereto.

This is further to certify that due notice of the time, place and general object of said meeting was given said stockholders by publication, at least six times a week for two successive weeks, in the Alexandria Gazette, a newspaper published in the City of Alexandria, Virginia, said City being near the place where the principal office in this State of the said Corporation is located (no daily newspaper being published in the County of Fairfax, Virginia), and by mailing a copy of such notice at least ten days prior to such meeting, to the last known post office address of each of the stockholders of record.

This is further to certify that at said meeting there were represented either in person or by duly executed proxy 4787 shares of stock out of a total of 5,000 shares issued and outstanding, and that after due consideration of said joint agreement which was submitted to the stockholders, a vote by ballot was taken thereon for the adoption or rejection of the same, and that a majority of all votes cast were in favor of said agreement, consolidation and merger.

IN TESTIMONY WHEREOF, Clarence P. King, the President of the said Washington, Arlington & Falls Church Railway Company, has hereunto subscribed his name and affixed the corporate seal of said Washington, Arlington & Falls Church Railway Company hereto on the 12th day of October, 1910; and John W. Rich, the Secretary of the said Washington, Arlington & Falls Church Railway Company has duly attested the same.

Clarence P. King,
President of Washington, Arlington
& Falls Church Railway Company.

(Seal)

Attest:

John W. Rich,
Secretary of Washington, Arlington
& Falls Church Railway Company.

District of Columbia, To-Wit:

I, Albert C. Murdaugh, a Notary Public in and for the District aforesaid, do hereby certify that Clarence P. King and John W. Rich, the President and Secretary respectively of the Washington, Arlington & Falls Church Railway Company, whose names are signed to the writing foregoing and hereunto annexed, bearing date on the 12th day of October, 1910, have acknowledged the same before me in my District aforesaid.

And I do further certify that each of them acknowledged that the seal affixed thereto is the corporate seal

of the said Washington, Arlington & Falls Church Railway Company.

Given under my hand & official seal this 12th day of October, 1910.

My commission as Notary expires June 9, 1911.

Albert C. Murdaugh,

(Seal)

Notary Public.

THIS IS TO CERTIFY that a duly called meeting of the stockholders of the Washington, Alexandria & Mt. Vernon Railway Company was held at the principal office of said Company at Mt. Vernon, Fairfax County, Virginia, on Wednesday, October 12th, 1910, at 2 o'clock P. M., said meeting having been called for the purpose of taking into consideration and voting on a joint agreement entered into by the Boards of Directors of the Washington-Virginia Railway Company, the Washington, Arlington & Falls Church Railway Company, and the Washington, Alexandria & Mt. Vernon Railway Company, for the merger or consolidation of said corporations, a copy of said joint agreement being attached hereto.

This is further to certify that due notice of the time, place and general object of said meeting was given said stockholders by publication, at least six times a week for two successive weeks, in the Alexandria Gazette, a newspaper published in the City of Alexandria, Virginia, said City being near the place where the principal office in this State of the said Corporation is located (no daily newspaper being published in the County of Fairfax, Virginia), and by mailing a copy of such notice at least ten days prior to such meeting, to the last known post office address of each of the stockholders of record.

This is further to certify that at said meeting there were represented either in person or by duly executed proxy 14,069 shares of stock out of a total of 15,000 shares issued and outstanding, and that after due

consideration of said joint agreement, which was submitted to the stockholders, a vote by ballot was taken thereon for the adoption or rejection of the same, and that a majority of all votes cast were in favor of said agreement, consolidation and merger.

IN TESTIMONY WHEREOF, Clarence P. King, the President of the said Washington, Alexandria & Mt. Vernon Railway Company, has hereunto subscribed his name and affixed the corporate seal of said Washington, Alexandria & Mt. Vernon Railway Company hereto on the 14th day of October, 1910, and John W. Pittock, the Secretary of the said Washington, Alexandria & Mt. Vernon Railway Company, has duly attested the same.

Clarence P. King,
President of Washington, Alexandria
Mt. Vernon Railway Company.

(Seal)

Attest:

John W. Pittock,
Secretary of Washington, Alexandria
& Mt. Vernon Railway Company.

State of Pennsylvania,
City of Philadelphia, To-wit:

I, Lillian M. Hudnut, a Notary Public in and for the State and City aforesaid, do hereby certify that Clarence P. King and John W. Pittock, the President and Secretary respectively of the Washington, Alexandria & Mt. Vernon Railway Company, whose names are signed to the writing foregoing and hereunto annexed, bearing date on the 14th day of October, 1910, have acknowledged the same before me in State and City aforesaid.

And I do further certify that each of them acknowledged that the seal affixed thereto is the corporate seal of the said Washington, Alexandria & Mt. Vernon Railway Company.

Given under my hand and official seal this 15 day of October, 1910.

My commission as Notary expires on the 21 day of January, 1911.

Lillian M. Hudnut,
(Seal) Notary Public.

THIS JOINT AGREEMENT, made this Twenty-first day of September, A. D. nineteen hundred and ten, between the Washington-Virginia Railway Company, a corporation organized and existing under the laws of the State of Virginia, party of the first part; the Washington, Arlington & Falls Church Railway Company, a corporation organized and existing under the laws of the State of Virginia, party of the second part; and the Washington, Alexandria & Mt. Vernon Railway Company, also a corporation organized and existing under the laws of the State of Virginia, party of the third part;

WITNESSETH THAT:

WHEREAS, the said party of the first part is a corporation duly chartered, organized and existing under and by virtue of a charter granted by the State Corporation Commission of the State of Virginia, and duly lodged in the office of the Secretary of the Commonwealth of the 22nd day of June, 1910, said charter having been amended by the said State Corporation Commission and said amendment having been duly lodged in the office of the Secretary of the Commonwealth on September 9, 1910;

AND WHEREAS, the said party of the second part is a corporation duly chartered, organized and existing as the successor, under and by virtue of Sections 1233 and 1234 of the Code of Virginia (1887), to all the corporate franchises, rights and privileges of the Washington & Arlington Railway Company, within the State of Virginia, the said Washington & Arlington Railway Company being a corporation chartered by an

Act of Congress, entitled "An Act to incorporate the Washington & Arlington Railway Company of the District of Columbia", approved February 28, 1891, and corrected by a joint resolution of Congress, approved March 2, 1891, and the said corporate franchises, rights and privileges within the State of Virginia being the same franchises, rights and privileges described in and granted by an Act of General Assembly of Virginia, entitled "An Act to approve and ratify a charter of incorporation granted by the Congress of the United States, approved February 28, 1891, entitled 'An Act to Incorporate the Washington & Arlington Railway Company of the District of Columbia', so far as it relates to its proposed railway line within the limits of the State of Virginia", approved January 26, 1892; and being also the same franchises, rights and privileges confirmed in and amended by an Act of the General Assembly of Virginia, entitled "An Act to confirm the organization and corporate existence of and to grant certain powers to the Washington, Arlington & Falls Church Railway Company", approved March 4, 1896; an Act of the General Assembly of Virginia, entitled "An Act to amend and re-enact Section 2 of an Act entitled 'An Act to confirm the organization and corporate existence of and to grant certain powers to the Washington, Arlington & Falls Church Railway Company', approved March 4, 1896", approved December 23, 1901; and by an amendment of its charter granted by the State Corporation Commission of Virginia and duly lodged in the office of the Secretary of the Commonwealth of Virginia, on August 31, 1908;

AND WHEREAS, the said party of the third part is a corporation of the State of Virginia, duly chartered, organized and existing under and by virtue of an Act of the General Assembly of Virginia, entitled "An Act to incorporate the Alexandria & Fairfax Passenger Railway Company", approved February 18, 1890; and an Act of the General Assembly of Virginia,

entitled "An Act to amend and re-enact the first Section of an Act approved February 18, 1890, entitled 'An Act to incorporate the Alexandria & Fairfax Passenger Railway Company', approved February 25, 1892"; and an Act of the General Assembly of Virginia, entitled "An Act to amend and re-enact an Act entitled 'An Act to incorporate the Alexandria & Fairfax Passenger Railway Company', approved February 18, 1890, and to amend and re-enact an Act entitled 'An Act to amend and re-enact the First Section of an Act approved February 18, 1890, entitled "An Act to incorporate the Alexandria & Fairfax Passenger Railway Company", approved February 25, 1892", approved February 25, 1896, whereby *inter alia* the corporate name of the said party of the third part was changed to Washington, Alexandria & Mt. Vernon Railway Company, and, in addition to the said Acts of Assembly, three amendments of the said charter of the said party of the third part granted by the State Corporation Commission of Virginia, and duly lodged in the office of the Secretary of the Commonwealth of Virginia, two thereof on February 25, 1905, and the third on September 2, 1908;

AND WHEREAS, by the terms of the aforesaid charter of the party of the first part, and the amendment thereto, the said party of the first part has authority to issue \$2,000,000.00 of common stock and \$1,000,000.00 of preferred stock, of which there has been issued and is outstanding \$1,000,000.00 of common stock full-paid, and \$25,000.00 of preferred stock full-paid, said corporation also having power and authority to purchase, lease, or construct, and to maintain and operate a railroad or railroads, to be operated with any kind of motive power, and to be used as a common carrier in the conveyance of persons or property, or both, extending from the town of Vienna, in the County of Fairfax, Virginia, to the village of Bluemont, in the County of Loudoun, Virginia, said corporation also

having power to subscribe to, purchase or otherwise acquire the stock, bonds or other securities and obligations of other companies;

AND WHEREAS, the said party of the second part, under and by virtue of its charter aforesaid, has located and constructed certain lines of electric railway in the Counties of Alexandria and Fairfax, in the State of Virginia, as follows, namely:—

A line extending from Rosslyn, in the County of Alexandria, to the town of Fairfax, in the County of Fairfax;

A line extending from Clarendon, in the County of Alexandria, to a point in said County of Alexandria known as Mt. Vernon Junction, where a connection is made with the line of the party of the third part hereto;

And a line extending from Rosslyn, aforesaid to Nauck, in said County of Alexandria;

AND WHEREAS, the said party of the second part has issued full-paid capital stock amounting, at par, to \$500,000.00 and bonds of the character and amounts hereinafter described, viz:—\$100,000.00 of "First Mortgage Bonds", consisting of 100 bonds for \$1,000.00 each, payable on the first day of July, 1925, with interest thereon, payable semi-annually on the first days of January and July in each year, at the rate of 6% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of July, 1895, from the said party of the second part to Walter Hinchman, Trustee, and duly recorded in the Counties aforesaid;

\$250,000.00 of "Second Mortgage Bonds", consisting of 250 bonds for \$1,000.00 each, payable on the 1st day of April, 1953, with interest thereon, payable semi-annually on the first days of October and April in each year, at the rate of 5% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of April, 1903, from the said party of the second part to the Merchants' Trust Company of the City of Phila-

delphia and State of Pennsylvania, Trustee, and duly recorded in the Counties aforesaid;

And \$1,000,000.00 of "First Consolidated Mortgage 5% Gold Bonds", consisting of 1,000 bonds for \$1,000.00 each, payable on the 1st day of September, 1958, with interest thereon, payable semi-annually on the first days of March and September in each year, at the rate of 5% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of September, 1908, from the said party of the second part to the Girard Trust Company, of the City of Philadelphia and State of Pennsylvania, Trustee, and duly recorded in the Counties aforesaid, and in the District of Columbia, except that \$398,000.00 of the said "First Consolidated Mortgage 5% Gold Bonds" are reserved in the hands of the said Girard Trust Company, Trustee, for the following purposes, viz:—

\$100,000.00 for the acquisition by purchase or exchange or for the redemption of the \$100,000.00 of "First Mortgage Bonds" above mentioned;

\$250,000.00 for the acquisition by purchase or exchange or for the redemption of the "Second Mortgage Bonds" above mentioned; and \$48,000.00 for the acquisition by purchase, lease, construction or otherwise of additional lines of railway and improvements and equipments of the railway of the said party of the second part, so that at present \$602,000.00 of the said "First Consolidated Mortgage 5% Gold Bonds" are outstanding.

AND WHEREAS, the said party of the third part, under and by virtue of its charter aforesaid, has located and constructed certain lines of electric railway in the District of Columbia and in the County of Alexandria, the City of Alexandria, and the County of Fairfax, in the State of Virginia, namely:

A line extending from its station at 12th Street and Pennsylvania Avenue, in the District of Columbia,

by, through and over certain streets in said District of Columbia, and along its rights of way in the Counties of Alexandria and Fairfax in the State of Virginia, and by, through and over certain streets in the City of Alexandria, Virginia, to Mount Vernon, in the County of Fairfax, Virginia; and also

A line from a point in Alexandria County known as Arlington Junction to Rosslyn, in the County of Alexandria, Virginia;

AND WHEREAS, the said party of the third part has issued full-paid capital stock amounting, at par, to \$1,500,000.00, and bonds of the character and amounts hereinafter described, namely:—

\$2,500,000.00 of "First Mortgage 5% Gold Bonds", consisting of 2,500 bonds of \$1,000.00 each, payable on the 1st day of March, 1955, with interest thereon, payable semi-annually on the first days of September and March in each year, at the rate of 5% per annum, and secured by a certain mortgage or deed of trust dated the 1st day of March, 1905, from the said party of the third part to The Real Estate Trust Company, of the City of Philadelphia and State of Pennsylvania, Trustee, duly recorded in the District of Columbia and in the City of Alexandria and in the Counties of Alexandria and Fairfax in the State of Virginia, of which bond issue \$2,450,000.00 is outstanding;

AND WHEREAS, the party of the first part is the owner of 550 shares of the full-paid capital stock of the party of the second part, of the par value of \$55,000.00, and is also the owner of 500 shares of the full-paid capital stock of the party of the third part, of the par value of \$50,000.00, as well as of other valuable securities and property;

AND WHEREAS, the party of the third part is the owner of 3,400 shares of the full-paid capital stock of the party of the second part, of the par value of \$340,000.00 on which stock, under a certain indenture

dated the 29th day of September, 1908, between the parties of the second and third parts hereto, dividends are guaranteed by the party of the third part hereto, as follows:—

DATE	RATE	AMOUNT
July 1, 1909,	1%	\$5,000.00
January 1, 1910,	1%	5,000.00
July 1, 1910,	1½%	7,500.00
January 1, 1911,	1½%	7,500.00
July 1, 1911,	2%	10,000.00
January 1, 1912,	2%	10,000.00
July 1, 1912,	2½%	12,500.00
January 1, 1913,	2½%	12,500.00
July 1, 1913,	3%	15,000.00

and thereafter semi-annually, on the first days of January and July in every year at the rate of 3% semi-annually, or a semi-annual amount of \$15,000.00 for the full term of said lease, said lease being for fifty-one years from and after the date of the aforesaid indenture, which said indenture is duly recorded in the Counties of Fairfax and Alexandria in the State of Virginia, and in the District of Columbia.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, AS FOLLOWS:—

First. That the parties of the second and third parts hereto shall be and they are hereby merged into and with the party of the first part hereto, under the corporate name of Washington-Virginia Railway Company, subject to the approval of the State Corporation Commission of the State of Virginia to said merger, after this joint agreement shall have been duly approved by a majority of the stockholders of each of said corporations, parties hereto, in accordance with the requirements of the laws of the State of Virginia.

Second. That the number, names and places of residence of the principal Officers and Directors of said

Company for the first year, or until their successors shall have been duly elected and shall have qualified. shall be as follows:

Name	Office	Residence
Clarence P. King, President, Philadelphia, Pa.		
W. H. Lawton, Treasurer, Philadelphia, Pa.		
J. B. Hoellman, Secretary, Washington, D. C.		
A. G. Clapham, Director, Washington, D. C.		
Frederick Mertens, Director, Cumberland, Md.		
Gardner L. Boothe, Director, Alexandria, Va.		
George E. Warfield, Director, Alexandria, Va.		
M. E. Church, Director, Falls Church, Va.		

Third. That under said merger there shall be issued of the maximum authorized capital stock of the first part \$975,000.00 preferred stock (9,750 shares of the par value of \$100.00 per share), and \$378,300.00 of the common stock (3,783 shares), all of which shall be fully paid and non-assessable, in addition to the \$25,000.00 preferred stock (250 shares) fully paid, and in addition to the \$1,000,000.00 common stock (10,000 shares) fully paid of the said party of the first part now issued and outstanding, all of which preferred stock shall be preferred both as to dividends and assets, shall be cumulative as set forth below, and shall contain *inter alia* provisions practically as follows:

a. That semi-annual dividends shall be paid thereon at the rate of 3% per annum for the fiscal year ending November 1, 1911; at the rate of 4% per annum for the fiscal year ending November 1, 1912; at the rate of 5% per annum for the fiscal year ending November 1, 1913; and at the rate of at least 5% per annum for subsequent years.

b. After payment of dividends on preferred stock equal to 5% thereon for any fiscal year, the preferred stock shall not share in any further profits of the Company for such year until dividends have been declared on the common stock for such fiscal year equal to 5%

thereon, and thereafter the preferred stock shall share equally with the common stock on any additional dividends declared for such fiscal year up to 7%; but the preferred stock shall be cumulative only at the rate of 3% for the fiscal year ending November 1, 1911; 4% for the fiscal year ending November 1, 1912; and 5% for any fiscal year thereafter and shall not be entitled, in any event, to share in the profits of the Company beyond dividends of 7% thereon for any fiscal year.

c. The preferred stock shall be redeemable at any time after three years from the issue thereof, at the price of \$105.00 per share, at the option of the company, on resolution of the Board of Directors. The preferred stock shall have no voting power.

Fourth. That the bonded indebtedness of the parties hereto shall remain unchanged, the party of the first part having no bonded debt; the total authorized bonded debt of the party of the second part being \$1,000,000.00 of which there is outstanding, as above set forth, \$100,000.00 of 6% bonds and \$852,000.00 of 5% bonds; and the total authorized bonded debt of the party of the third part being \$2,500,000.00 of which there is outstanding, as above set forth, \$2,450,000.00 of 5% bonds.

Provided, that, the merging corporation shall have the power to require the trustee under the mortgage of the 1st day of September, 1908, from the party of the second part to the Girard Trust Company, and the trustee under the mortgage of the 1st day of March, 1905, from the party of the third part to The Real Estate Trust Company, above mentioned, to certify and deliver to it in accordance with the terms of said mortgages respectively from time to time, such of the bonds secured thereby as may not heretofore have been so certified and delivered for the purposes and under the conditions in said mortgages specified respectively, and

said merging corporation and its officers shall have the right and power to use the names and seals of either or both of said merged corporations in making the necessary certificates to justify the delivery of said bonds, by either of said Trustees.

Fifth. That the capital stock of the party of the second part now owned by the party of the first part, amounting at par value to \$55,000.00, and the capital stock of the party of the second part now owned by the party of the third part, amounting at par value to \$340,000.00 shall be cancelled, and that the owners of the balance of said capital stock of the said party of the second part, aggregating at par value \$105,000.00, shall receive in exchange therefor an equal amount of the preferred stock of the Washington-Virginia Railway Company, party of the first part hereto, and in addition thereto said owners shall receive in par value common stock of the said Washington-Virginia Railway Company, an amount equal to fifteen per cent. (15%) of their said holdings, and said Washington, Arlington & Falls Church Railway Company stock as exchanged or otherwise acquired under the laws of the State of Virginia shall be cancelled. That the provisions contained in the indenture or lease between the parties of the second and third parts hereto, bearing date of September 29, 1908, relating to guaranteed dividends on the stock of the party of the second part hereto, as set out in the preamble hereto, shall no longer be binding on the parties to said indenture or lease or on the Washington-Virginia Railway Company, and the said lease is hereby cancelled save that the said Washington-Virginia Railway Company assumes all liability of the party of the third part in guaranteeing the prompt payment of the principal and interest of the bonds of the party of the second part as set out in said lease.

Sixth. That the capital stock of the party of the

third part now owned by the party of the first part, amounting at par value to \$50,000.00, shall be cancelled, and that the owners of the balance of said capital stock of the party of the third part, aggregating at par value \$1,450,000.00 shall receive in exchange therefor sixty per cent. (60%) of their holdings in the preferred stock of the Washington-Virginia Railway Company, party of the first part hereto, and in addition thereto the said owners shall receive an amount at par of common stock of the said Washington-Virginia Railway Company equal to twenty-five per cent. (25%) of their said holdings, and said balance of Washington, Alexandria & Mt. Vernon Railway Company stock as exchanged or otherwise acquired under the laws of the State of Virginia shall be cancelled.

Seventh. That on complying with the laws of the State of Virginia pertaining thereto, and upon the perfecting, as above set forth, of the said merger or consolidation, the several corporations, parties hereto, shall be deemed and taken as one corporation under the corporate name and style of Washington-Virginia Railway Company, upon the terms and conditions, and subject to the restrictions set forth in said agreement, and all and singular the rights, privileges, corporate powers and franchises of each of said corporations, parties to the same, as fully and effectually as if the corporate powers of the several corporations were granted to the merging corporation at length, and all property, real and personal, and all debts due on whatever account, as well of stock subscriptions as other things in action, belonging to each of said corporations, shall be taken and deemed as transferred to and invested in said Washington-Virginia Railway Company without further act or deed; and all property, all rights of way, and all and every other interest shall be as effectually the property of the said Washington-Virginia Railway Company as they were of the former corporations, par-

ties to this agreement; and the title to real estate, either by deed or otherwise, under the laws of the State of Virginia, vested in either corporation, shall not be deemed to revert or be in any way impaired by reason of this merger; the liens and rights of the bondholders and other creditors being preserved unimpaired; and the respective corporations shall be deemed to continue in existence to preserve the same; and all debts, liabilities and duties of either of said corporations shall henceforth attach to said Washington-Virginia Railway Company and be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it, all as in that case by the statute law of the State of Virginia provided; and as to any and all property, real or personal, and all rights, franchises, easements and licenses owned by either party hereto and situated outside of the jurisdiction of the State of Virginia, or held under such circumstances that the Virginia statutes under which this agreement is executed will not operate to transfer the right thereto, a good and valid deed sufficient to transfer the same to the consolidated corporation shall be executed under the corporate seal of the corporation holding the same, properly acknowledged for record, and shall be duly recorded in accordance with the laws of the situs of such property, franchise, easement or license.

Eighth. The said Washington-Virginia Railway Company, as so consolidated, shall have the right to exercise all and singular the corporate powers now held by either of the said merging corporations, as well as all and singular the powers granted and conferred upon railroad corporations organized under the Act of the General Assembly of Virginia, entitled "An Act concerning corporations", which became a law May 21st, 1903, and all acts amendatory or supplemental thereto, whether heretofore or hereafter passed, and especially the powers conferred on such corporations under the

provisions of Chapter two and Chapter five of said Act, including the power to subscribe to, purchase or otherwise acquire, and to guarantee and to become surety in respect to the stock, bonds and other securities and obligations of other corporations.

The above joint agreement was presented to the Board of Directors of the Washington, Alexandria & Mt. Vernon Railway Company, at a meeting held in the City of Philadelphia, Pennsylvania, on the 21st day of September, 1910, and was duly approved by said Board; it was presented at a meeting of the Board of Directors of the Washington, Arlington & Falls Church Railway Company, held in the City of Philadelphia, Pennsylvania, on the 22nd day of September, 1910, and was duly approved by said Board; and was presented to the Board of Directors of the Washington-Virginia Railway Company at a meeting held in the town of Falls Church, Virginia, on the 23rd day of September, 1910, and was duly approved by said Board.

IN TESTIMONY WHEREOF, the Board of Directors of the said parties hereto have entered into this joint agreement, under the corporate seals of their respective corporations, in order that the same may be submitted to the stockholders of each of said corporations at a meeting of said stockholders to be duly called for the purpose of taking the same into consideration.

(Signed) M. E. Church,

“ George B. Fadeley,
“ L. L. Northrup,
“ O. B. Livingstone,
“ F. E. Parker,
“ H. C. Houston,
“ T. M. Talbott, M. D.

Directors of WASHINGTON-VIRGINIA RAILWAY COMPANY.

Attest:

F. E. Parker (Signed) (SEAL)
Secretary.

(Signed) Clarence P. King,
" Richard W. King,
" John W. Pittock,
" John W. Rich,
" Jno. S. Barbour.

Directors of WASHINGTON, ARLINGTON & FALLS CHURCH RAILWAY COMPANY.

Attest:

John W. Rich, (Signed) (SEAL)
Secretary.

(Signed) Clarence P. King,
" S. Wynne Ffoulkes,
" H. H. Pearson, Jr.,
" E. H. Stokes,
" F. H. Treat,
" J. W. Pittock,
" Howard S. Graham,
" Edgar H. Butler,
" F. Mertens.

Directors of WASHINGTON, ALEXANDRIA & MT. VERNON RAILWAY COMPANY.

Attest:

John W. Pittock, (Signed) (SEAL)
Secretary.

COMMONWEALTH OF VIRGINIA.

Department of the State Corporation Commission.
CITY OF RICHMOND, 17th day of October, 1910.

In re. MERGER AND CONSOLIDATION of
Washington, Arlington & Falls Church Railway Com-
pany and Washington, Alexandria & Mt. Vernon Rail-

way Company into and with Washington-Virginia Railway Company.

THIS DAY there was presented to the STATE CORPORATION COMMISSION three certificates, by WASHINGTON-VIRGINIA RAILWAY COMPANY, WASHINGTON, ARLINGTON & FALLS CHURCH RAILWAY COMPANY and WASHINGTON, ALEXANDRIA & MT. VERNON RAILWAY COMPANY, all corporations organized and existing under the laws of the State of Virginia respectively executed, signed and acknowledged by the President and Secretary of each of said corporations, with the respective corporate seals, attested by the Secretary of each corporation, affixed thereto, said certificates being accompanied by an agreement between said three corporations, bearing date on the 21st day of September, 1910, and properly executed by the officers of said corporations respectively, said certificates and agreements having for their object to effect a merger and consolidation of the capital stock, franchises and property of each of the said corporations into and with the capital stock, franchises and property of the other two said corporations, the consolidated corporation to be known as the WASHINGTON-VIRGINIA RAILWAY COMPANY, and it appearing from the said papers that the said agreement was entered into between the boards of directors of the said three corporations and that it was submitted to the stockholders of each of the said corporations separately, at meetings called and held as required by law, and that at each of said meetings, on vote taken by ballot, more than a majority of the entire capital stock of each of the said corporations respectively, was cast in each of the said meetings in favor of the said agreement, consolidation and merger; and it further appearing from said papers that the requirements of Section 41, Chapter 5, of "An Act concerning corporations", which became a law on the 21st

day of May, 1903, have been complied with by the said corporations:

The STATE CORPORATION COMMISSION doth certify that it has ascertained and does not declare that the said corporations WASHINGTON-VIRGINIA RAILWAY COMPANY, WASHINGTON, ARLINGTON & FALLS CHURCH RAILWAY COMPANY, and WASHINGTON, ALEXANDRIA & MT. VERNON RAILWAY COMPANY, have complied with the requirements of law and have entitled themselves to a merger and consolidation of the three corporations, the single and distinct corporation so created by merger and consolidation, to be known under and by the name of the

WASHINGTON-VIRGINIA RAILWAY COMPANY in accordance with the terms and provisions and subject to the conditions contained in the said agreement bearing date on the 21st day of September, 1910, to the same extent as if the said agreement were not herein transcribed in full. And the said single and consolidated corporation, WASHINGTON-VIRGINIA RAILWAY COMPANY, is declared to be created pursuant to the provisions relating to merger and consolidation of corporations and subject to an Act of the General Assembly entitled "An Act concerning corporations", which became a law on the 21st day of May, 1903, and to have the powers and privileges conferred, and to be subject to all the conditions and restrictions imposed by said Act and by law.

And the said certificates presented to the Commission by the said three constituent corporations, together with the said agreement, are, with this order, certified to the Secretary of the Commonwealth for record in his office, as required by law.

Robert R. Prentis, Chairman.

(Seal)

R. T. Wilson, Clerk.

COMMONWEALTH OF VIRGINIA:

Office of the Secretary of the Commonwealth.
In the CITY OF RICHMOND, the 17th day of October, 1910.

The foregoing Articles of Merger of the WASHINGTON-VIRGINIA RAILWAY COMPANY, WASHINGTON, ARLINGTON & FALLS CHURCH RAILWAY COMPANY, and WASHINGTON, ALEXANDRIA & MT. VERNON RAILWAY COMPANY, under the name of WASHINGTON-VIRGINIA RAILWAY COMPANY, were this day received and duly recorded in this office, according to law, and certified to the Clerk of the State Corporation Commission.

B. O. James,
(SEAL) Secretary of the Commonwealth.

COMMONWEALTH OF VIRGINIA.

(Seal of the State.)

OFFICE OF THE SECRETARY OF THE COMMONWEALTH.

I, B. O. JAMES, Secretary of the Commonwealth of Virginia, certify that the foregoing is a true copy of the

M E R G E R
C H A R T E R

OF THE

WASHINGTON-VIRGINIA RAILWAY COMPANY, WASHINGTON, ARLINGTON & FALLS CHURCH RAILWAY COMPANY, and WASHINGTON, ALEXANDRIA & MT. VERNON RAILWAY COMPANY, under the name of WASHINGTON-VIRGINIA RAIL-

WAY COMPANY, recorded in this office on the 17th day of October, A. D. 1910.

(Seal) GIVEN under my hand and the Lesser Seal of the Commonwealth at Richmond, this the Thirteenth day of June, in the year of our Lord one thousand nine hundred and twelve and in the one hundred and thirty-sixth year of the Commonwealth.

B. O. James,
Secretary of the Commonwealth.

152 Afterwards, on the 16th day of May, 1913, the Court entered an order overruling and denying the motion to quash and set aside the return of summons, as follows:

"A motion to quash the return of the Marshal having been submitted to the Court and taken under advisement, and now the Court, being fully advised in the premises, this sixteenth day of May, 1913, doth order that said motion be, and it is hereby over-ruled, to which action of the Court defendant excepts.

Leave is granted defendant to file Bill of Exceptions within ten days. It is further ordered that defendant file an Affidavit of Defense within ten days."

To which action and ruling of the Court the defendant excepted at the time and still excepts.

And that the above matters and things may be made a part of the record in this cause, defendant tenders this, its Bill of Exceptions, and prays that the same may be signed, sealed and allowed as such, which is accordingly done, this 27th day of May, 1913.

J. W. THOMPSON, [SEAL.]
District Judge.

Approved May 26, 1912.

(Sgd.) JOSEPH DE F. JUNKIN,

(Sgd.) JOHN G. JOHNSON,

Counsel for Plaintiff.

(Sgd.) WM. A. GLASGOW, JR.,
Counsel for Defendant.

153 In the District Court of the United States for the Eastern District of Pennsylvania, June Term, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA

vs.

WASHINGTON-VIRGINIA RAILWAY COMPANY.

Sur Rule to Vacate Service of Writ.

(Filed May 8, 1913.)

THOMPSON, J.:

Suit in assumpsit was brought by the plaintiff, a Pennsylvania corporation, against the defendant, a Virginia corporation. The Marshal's return of service sets forth that the writ was served on the defendant "at its office No. 1307 Real Estate Trust Building, Broad and Chestnut Streets, City of Philadelphia, by handing a true and attested copy thereof to Frederick H. Treat, President of said Company, and making known the contents of the same to him." The manner of service as set out in the return is therefore in accordance with the Pennsylvania Act of July 9, 1901, (P. L. 614) in that it sets out service upon the president and at the defendant's office.

The suit is brought in this district under the provisions of Section 51 of the Judiciary Act of March 3, 1911, which provides that,

"Where the jurisdiction is founded only on the fact that the action is between citizens of different States, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

The plaintiff is a resident of this district and the question to be determined, from the pleadings and the depositions taken under the rule, is whether the defendant at the time of service of the writ was or was not doing business in the district in such manner and to such extent as to warrant the inference that through its agents it was present here.

154 Green v. Chicago B. & Q. Railway Co., 205 U. S. 530.
 St. Louis Southwestern Rwy. Co. of Texas v. Alexander,
 U. S. Supreme Court Advance Sheets, March 1, 1913, p.
 245.

As was said by Mr. Justice Day in the latter case:

"This court has decided each case of this character upon the facts brought before it and has laid down no all-embracing rule by which it may be determined what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. In a general way it may be said that the business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served and in which it is bound to appear when a proper agent has been served with process."

The fact that a foreign corporation maintains an office and has a resident agent of limited authority in the district for some special purpose has been held in numerous cases not sufficient to justify the inference of the presence of the corporation within the district.

The evidence in this case discloses that the defendant is the successor by merger of two electric Railway Companies, one of which was the Washington, Alexandria & Mt. Vernon Railway Company, which issued bonds upon which the present suit is brought, which bonds are payable at the office of the plaintiff in the city of Philadelphia. The defendant Company operated an electric railway running from Mt. Vernon to Alexandria, in Virginia, and from that point into the city of Washington, D. C. Under the laws of Virginia, the defendant may have offices outside of the State. The Virginia office of the Company, which it is obliged to maintain by the laws of that State was at Mt. Vernon, Virginia, where there was a ticket agent upon whom service could be properly had under the Virginia statutes and where there is a room where the annual meetings of its stockholders are held. The Company also maintained a general office at Washington, D. C., where the business of conducting the physical operation of its road, through its manager,

155 was carried on. At its Washington office were kept the cash books of the Company showing daily receipts of operation, and the collection of accounts due, its operating record, pay roll time record, a statement of claims accruing and their payment

as made, a book record of car hours, mileage, etc. No books concerning the business of the Company were kept at the Mt. Vernon office. The commercial account of the Company was kept at the Commercial National Bank at Washington, D. C., and the receipts from the operation of the road were deposited and checks for operating expenses were drawn upon that bank. The Company also kept three small accounts in Alexandria, Virginia. For some time prior to the merger, the Washington, Alexandria & Mt. Vernon Railway Company, the defendant's predecessor, maintained an office at 1307-1310 Real Estate Trust Building, Philadelphia, which office was leased by Clarence P. King, who was the president of the Company, and subsequently became President of the merged Company until he was succeeded by Frederick H. Treat, who was President of the defendant Company at the time of the service of the writ. The defendant Company paid rental to Mr. King at the rate of Fifty Dollars per month, which covered the right of desk room for its president, treasurer and book-keeper and the use of the furniture, fixtures and telephone in the office. There appears to have been no formal authority by any action of the directors for maintaining any office except that at Mt. Vernon, Virginia, but the by-laws of the Company provide that its stock shall be transferred only on the books of the Company at the office of its treasurer. Upon application for listing its stock on the Washington Stock Exchange, the Washington, Alexandria & Mt. Vernon Railway Company, through its president, declared that "the principal office of the Company is located at Mt. Vernon, Virginia, with branch offices in Washington and Philadelphia". After the merger, the defendant applied to the Philadelphia Stock Exchange for the listing of its securities and declared in its application "Stock is transferred at the Company's

156 General Office, 1307 Real Estate Trust Building, Philadelphia, and registered by the Girard Trust Company, Philadelphia, Registrar", and declared its offices to be as follows:

"Offices:

Principal, Mt. Vernon, Virginia.

General and Transfer, 1307 Real Estate Trust Building, Philadelphia.

Washington: 1202 Pennsylvania Avenue."

The name of the defendant company appeared in the City Directory for the years 1911-1912, which was in pursuance of information obtained from the treasurer of the Company. At the office in Philadelphia, the corporation kept its regular business ledgers, its stock transfer books and stock ledgers. The book-keeper of the Company had his desk in the office in Philadelphia, made his entries in the corporation books kept there and conducted general correspondence in relation to the Company's business at that office. The treasurer of the Company maintained the only treasurer's office of the Company there and had there his desk, papers, and treasurer's books. The Company kept four bank accounts in Philadelphia in the Girard Trust Company, Bank of North America, Corn Exchange Bank and the Central Bank, into which accounts, from time to time, was deposited the surplus of cash not needed in the active operation

of the Company. Out of these accounts were paid interest on its mortgages, dividends, and its larger bills, by checks drawn at the Philadelphia office by the treasurer, and the deposit and check books on such banks were kept at the Philadelphia office. The president, who, under the by-laws, had custody of the seal of the company, kept that seal at the Philadelphia office. The president and treasurer lived in Philadelphia, and the president had his desk at the office 1307 Real Estate Trust Building, where he was present two days in each week and went to Washington once or twice a week. While in Philadelphia, the president transacted at the office such business of the Company as came to his attention and conducted the correspondence of the Company upon official stationery headed

with the name of the defendant company, the address, 1307

157 Real Estate Trust Building, and the words "Office of F. H. Treat, President, Philadelphia", or "Office of the President, Philadelphia". All of the bills of the Company, after approval in Washington by the manager of the railroad, were sent to Philadelphia for examination and approval, and the checks for payment were drawn at the Philadelphia office and forwarded to the Washington office. No one at the Washington office had authority to draw checks. No money was paid out at the Washington office excepting petty cash for daily expenses, small bills, etc. While the Company's entire physical business as a common carrier was transacted in the District of Columbia and the State of Virginia, it is apparent from the above facts that it was maintaining an office for the conduct of a large part of its executive, administrative and financial business in this district, at which were the offices of its president and treasurer as such. It is not essential, to establish the presence of a corporation by the doing of business within this district, that all of its business should be transacted here.

I think sufficient has been shown to establish the fact that the defendant maintained an office in this district at which, through its president, treasurer and book-keeper, it carried on an important and essential part of its business in its corporate capacity. The facts in this case clearly distinguish it from those cases in which a subordinate agent with limited authority conducts some special business which does not involve the exercise of corporate functions.

The rule is therefore discharged.

158 In the District Court of the United States for the Eastern District of Pennsylvania, June Term, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY.

Sur Rule to Vacate Service of Writ.

(Filed May 19, 1913.)

A motion to quash the return of the Marshal having been submitted to the Court and taken under advisement, and now the Court, being fully advised in the premises, this sixteenth day of May, 1913, doth order that said motion be, and it is hereby over-ruled, to which action of the Court defendant excepts.

Leave is granted defendant to file Bill of Exceptions within ten days. It is further ordered that defendant file an Affidavit of Defence within ten days.

J. W. THOMPSON, Judge.

May 19, 1913.

159 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY.

Judgment.

(Filed May 27, 1913.)

Now on this 27th day of May, 1913, comes the plaintiff above named, by its attorney, Joseph de F. Junkin, and moves for judgment against defendant for want of an affidavit of defense, and it appearing that the defendant, though duly summoned and served with process according to law, has failed to appear or file an affidavit of defense within ten days from Friday, May 16th, 1913, as heretofore ordered by this court, it is hereby ordered and adjudged by the Court that the plaintiff have and recover from the defendant the sum of Eighty-eight thousand and Eighty-seven Dollars and eight cents (\$88,087.08), being the principal sum of Eighty-three Thousand, Five Hundred and Sixty-eight Dollars (\$83,568) claimed in the Statement of Claim filed in this case, together with interest thereon from July 1, 1912, which is also claimed in said

Statement, with interest thereon from the date hereof at the rate of six per cent. (6%) per annum until paid, and the costs of this suit, which are now taxed at —.

J. W. THOMPSON,
District Judge.

Approved May 26, 1913.

JOSEPH DE F. JUNKIN,
Atty for Plf.

160 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY.

Petition for Writ of Error.

(Filed May 27, 1913.)

And now comes the above named defendant herein, and says that on or about the 27th day of May, 1913, the District Court aforesaid entered a judgment herein in favor of the plaintiff and against this defendant, in which judgment, and proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this defendant prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of the errors so complained of, and that the transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Said writ of error is sued out to renew solely the question as to whether the said District Court had right, power or jurisdiction to enter the said judgment, that is to say, the question as to whether said District Court had such jurisdiction over the person of defendant as to authorize the rendition of the judgment aforesaid.

(Sgd.) NORMAN GREY,
(Sgd.) WM. A. GLASGOW, JR.,
Attorneys for Defendant.

161 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA, Plaintiff,
vs.

WASHINGTON-VIRGINIA RAILWAY COMPANY, Defendant.

Assignment of Errors.

(Filed May 27, 1913.)

The defendant in this action in connection with its petition for writ of error, makes the following assignment of errors, which it avers occurred in the proceedings in this cause:

(First.) The Court erred in overruling defendant's motion to quash the return of service made by the United States Marshal to the writ of summons in this cause and to set aside said return and to dismiss this cause for want of jurisdiction.

162 (Second.) The Court erred in conceiving that it had jurisdiction over the person of the defendant in this cause.

(Third.) The Court erred in conceiving that it had jurisdiction to render a personal judgment against defendant and in conceiving that the service of summons herein was such as to give the Court power or jurisdiction to enter judgment against defendant.

(Fourth.) The Court erred in that after it had overruled and denied the motion aforesaid to set aside the service of summons, it rendered judgment against this defendant, because said Court had no power or jurisdiction to render said judgment.

(Fifth.) The Court erred in conceiving and holding that Frederick H. Treat, the person upon whom the summons was attempted to be served, was authorized to receive service of process on behalf of defendant.

(Sixth.) The Court erred in conceiving and holding that defendant was so engaged in the transaction of business within the Eastern District of Pennsylvania as to make it amenable to this suit and to process herein.

Wherefore, the defendant prays that said judgment be reversed, annulled and altogether held for nothing and that it may be restored to all things which it hath lost by occasion of the actions of the Court aforesaid.

(Sgd.)

(Sgd.)

NORMAN GREY,
WM. A. GLASGOW, JR.,
Attorneys for Defendant.

163 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA, Plaintiff,
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY, Defendant.

Order Allowing Writ of Error.

(Filed May 27, 1913.)

Now on this day comes the defendant by its attorneys and files herein and presents to the Court its petition praying for the allowance of a writ of error and an assignment of errors intended to be urged by it praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the Court does allow the writ of error upon the defendant giving bond according to law in the sum of One hundred and seventy-six thousand, two hundred dollars (\$176,200.00) dollars, which bond shall operate as a supersedeas. Said writ of error is allowed in order that the said Supreme Court may review the single and definite question as to whether there has been such service of process upon the defendant in this cause as to confer upon the District Court the right, power and jurisdiction to render judgment against defendant,—that is to say, the question as 164 to whether the District Court erred in overruling defendant's motion to set aside the return of service made by the United States Marshal to the writ of Summons in this cause and in thereafter taking and exercising jurisdiction in this cause.

J. W. THOMPSON,
District Judge.

165 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY.

Certificate of Judge that the Question of Jurisdiction is Involved in This Cause.

(Filed May 27, 1913.)

I hereby certify to the Supreme Court of the United States solely the question as to whether there has been such service of process upon defendant in this cause as to authorize this Court to take and exercise jurisdiction over defendant. Said question arose on defendant's motion to set aside the return of service made by the United States Marshal to the writ of summons herein and to vacate service of the writ and to dismiss this cause for want of jurisdiction over defendant. This Court, conceiving that the service of said summons upon defendant was valid and sufficient to give this Court jurisdiction, over-ruled said motion, proceeded to exercise said jurisdiction, and rendered final judgment against defendant in an opinion, a copy whereof will appear from the Record certified in this cause.

This certificate is made conformable to Act of Congress of March 3, 1891, Chapter 517, on this 27th day of May, A. D. 1913.

J. W. THOMPSON, Judge.

166 In the District Court of the United States for the Eastern District of Pennsylvania, June Sessions, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA, Plaintiff
vs.
WASHINGTON-VIRGINIA RAILWAY COMPANY, Defendant.

Bond.

(Filed May 27, 1913.)

UNITED STATES OF AMERICA, ss:

Know all men by these presents, that we, Washington-Virginia Railway Company (a corporation), and The United States Fidelity and Guaranty Company (a corporation), are held and firmly bound unto The Real Estate Trust Company of Philadelphia (a corpora-

tion) in the sum of One Hundred and Seventy-six Thousand, Two Hundred Dollars (\$176,200), to the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 27th day of May, A. D. 1913. Upon this express condition, to wit: Whereas, the above named Washington-Virginia Railway Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the cause above named by the District Court of the United States for the Eastern District of Pennsylvania. Now if the above named Washington-Virginia Railway Company 167 shall prosecute its said writ of error to effect and answer all damages including just damages for delay, interest and costs, then this obligation to be void; otherwise to remain in full force and effect.

WASHINGTON-VIRGINIA RAILWAY
COMPANY,

(S'g'd) By FREDERICK H. TREAT, *President.*

Attest:

(S'g'd) W. H. LAWTON,
[SEAL.] *Asst Secretary.*

THE UNITED STATES FIDELITY
AND GUARANTY COMPANY,

(S'g'd) By J. WALTER ZEBLEY,
Res. Vice-President.

Attest:

(S'g'd) R. LEO HUNT,
[SEAL.] *Resident Secretary.*

The above bond is hereby approved and ordered to be filed and made a part of the record, and the filing of the above bond shall serve as supersedeas.

J. W. THOMPSON, *Judge.*

168 In the District Court of the United States for the Eastern District of Pennsylvania, June Term, 1912.

No. 1980.

THE REAL ESTATE TRUST COMPANY OF PHILADELPHIA

vs.

WASHINGTON-VIRGINIA RAILWAY COMPANY.

Præcipe.

(Filed June 4, 1913.)

To the Clerk of the District Court of the United States for the Eastern District of Pennsylvania:

In making up the Transcript of Record sur Writ of Error to the Supreme Court of the United States in the above entitled case, please include therein the following papers and no others:

146 WASHINGTON-VA. RY. CO. VS. REAL ESTATE TRUST CO. OF PHILA.

- Docket entries.
- Writ of Error.
- Citation.
- Præcipe for Summons.
- Summons.
- Return of Marshal.
- Statement of Plaintiff's Claim.
- Rule to file Affidavit of Defense.
- Bill of Exceptions.
- Opinion.
- Order Overruling Motion to Quash Return of Writ.
- Judgment.
- Petition for Writ of Error.
- Order allowing Writ of Error.
- Assignment of Errors.
- Certificate of Judge as to Question of Jurisdiction.
- Bond.
- Præcipe for Record.
- Clerk's certificate to record.

WM. A. GLASGOW, JR.,
Attorney for Defendant.

169 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, etc.:

I, William W. Craig, Clerk of the District Court of the United States for the Eastern District of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of Pleas and proceedings in the case of Real Estate Trust Company of Philadelphia v. Washington-Virginia Railway Company, No. 1980, June Session, 1912, as per præcipe filed, a copy of which is hereto annexed, now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said District Court at Philadelphia, this 27th day of June in the year of our Lord one thousand, nine hundred and thirteen and in the one hundred and 37th year of the Independence of the United States.

[Seal of the District Court of the United States,
E. D. Penna.]

WILLIAM W. CRAIG,
Clerk District Court U. S.,
By GEORGE BRODBECK,
Deputy Clerk.

Endorsed on cover: File No. 23,772. E. Pennsylvania D. C. U. S. Term No. 621. Washington-Virginia Railway Company, plaintiff in error, vs. Real Estate Trust Company of Philadelphia. File July 2d, 1913. File No. 23,772.

U. S. SUPREME COURT

FEB 18 1915

CLERK

212

SUPREME COURT OF THE UNITED STATES.

WASHINGTON-VIRGINIA RAILWAY COMPANY,

REAL ESTATE TRUST COMPANY OF PHILADELPHIA,

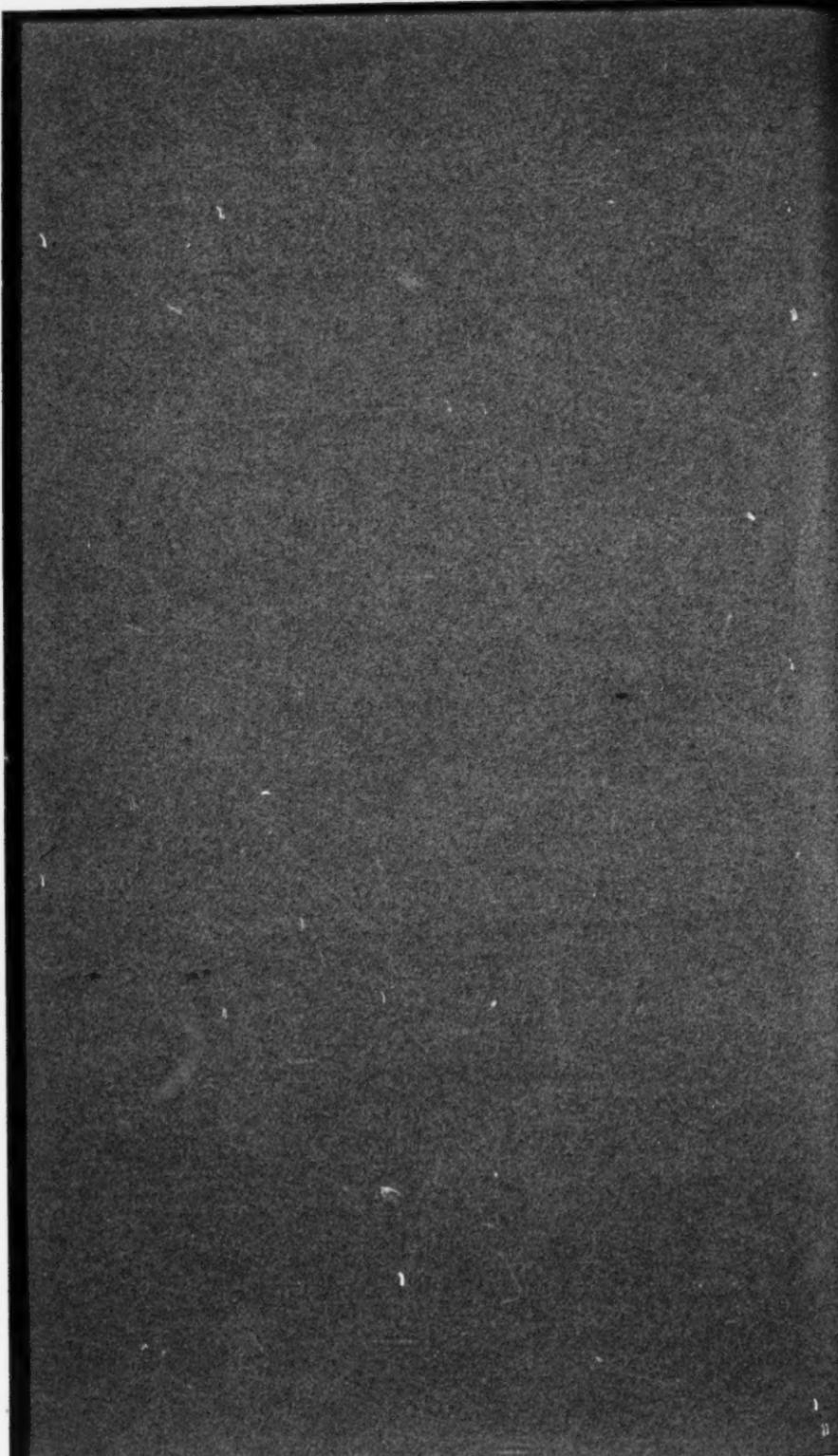
Brief for Plaintiff-in-Error.

JOHN S. BARKSDALE,

Norman Clegg,

Wm. A. Glasgow,

Conrad F. Schaeffer,



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Supreme Court of the United States.

No. 621. October Term, 1913.

WASHINGTON-VIRGINIA RAILWAY COMPANY,

Plaintiff-in-Error,

vs.

REAL ESTATE TRUST COMPANY OF PHILA-
DELPHIA,

Defendant-in-Error.

BRIEF FOR PLAINTIFF-IN-ERROR.

This action was brought in the United States District Court for the Eastern District of Pennsylvania, by the Real Estate Trust Company of Philadelphia against the Washington-Virginia Railway Company, (a Virginia corporation), to recover a judgment on certain bonds made by the Washington, Alexandria & Mt. Vernon Railway Company, (a Virginia corporation), and the payment of which, it is claimed, was assumed by the Washington-Virginia Railway Company, (Record, p. 19), under the provisions of an agreement by which three corporations organized and existing under the laws of the State of Virginia were merged under the name of the Washington-Virginia Railway Company, (Record, pp. 13 to 22, inclusive).

Hereafter the Washington-Virginia Railway Company, defendant in the Court below, and the plaintiff-in-error, will be referred to as defendant, and Real Estate Trust Company of Philadelphia, plaintiff below, and defendant-in-error, will be referred to as plaintiff.

The action was begun by summons, upon which the Marshal's return was as follows (Record, p. 4):

“July 5th, 1912.

“At Philadelphia in my district served the within writ on Washington-Virginia Railway Company at its office #1307 Real Estate Trust Company Building, Broad & Chestnut St., City of Philadelphia, by handing a true and attested copy thereof to Frederick H. Treat, President of said Company and making known the contents of the same to him.

So answers

JOHN B. ROBINSON,
U. S. Marshal,
Per ABRAM B. MYERS,
Deputy.”

The statement of claim filed by plaintiff, sets forth that the Washington-Virginia Railway Company is a corporation chartered under the laws of the State of Virginia, but it was not alleged that the defendant was or is doing business in the State of Pennsylvania (Record, p. 7). On the 19th day of July, 1912, the defendant by its counsel, filed the following motion (Record, p. 25):

“AND NOW, July 19th, 1912, comes the Washington-Virginia Railway Company, by William A. Glasgow, Jr., and Norman Grey, its attorneys (appearing conditionally for the purpose of this motion only), and moves the Court for a rule on the plaintiff to show cause why the service of the writ in the above case should not be vacated.”

A rule was granted by the District Court, and thereupon the depositions set forth in the Record were taken on the question of whether the defendant, a foreign corporation, was doing business within the State of Pennsylvania, sufficient to justify service of process upon it in a personal action. On the 19th day of May, 1913, an order was entered that the motion to quash the return of the Marshal "be and it is hereby over-ruled, to which action of the Court defendant excepts", and a Bill of Exceptions was duly allowed (Record, p. 140); and thereupon, the Court directed the defendant to file an affidavit of defense, and it failing to appear and file such affidavit, judgment was entered for the plaintiff, (Record, p. 140). Thereupon, a petition for writ of error to this Court was filed, with the Assignments of Error, (Record, pp. 141-2), and an order was entered allowing the writ of error (Record, p. 143), and on May 27th, the Judge of the District Court certified to this Court the question of jurisdiction involved in the case, as follows (Record, p. 144):

"I hereby certify to the Supreme Court of the United States solely the question as to whether there has been such service of process upon defendant in this cause as to authorize this Court to take and exercise jurisdiction over defendant. Said question arose on defendant's motion to set aside the return of service made by the United States Marshal to the writ of summons herein and to vacate service of the writ and to dismiss this cause for want of jurisdiction over defendant. This Court, conceiving that the service of said summons upon defendant was valid and sufficient to give this Court jurisdiction, over-ruled said motion, proceeded to exercise said jurisdiction, and rendered final judgment against defendant in an opinion, a copy whereof will appear from the Record certified in this cause.

"This certificate is made conformable to Act of Congress of March 3, 1891, Chapter 517, on this 27th day of May, A. D. 1913.

J. W. THOMPSON, Judge."

It, therefore, appears that the defendant, the Washington-Virginia Railway Company is a Virginia corporation; that this action was begun in the District Court of the United States for the Eastern District of Pennsylvania by the Real Estate Trust Company of Philadelphia, a Pennsylvania corporation; and the sole question involved is whether the defendant was doing such business within the Eastern District of Pennsylvania as to justify an action against it, and the service of process giving the Court jurisdiction to enter a personal judgment against the defendant.

STATEMENT OF FACTS.

The Washington-Virginia Railway Company was incorporated under the laws of the State of Virginia on the 22nd day of June, 1910 (Record, p. 13), its principal office is at Mt. Vernon, Fairfax County, Virginia, and under authority of its charter operates a railway in the State of Virginia and in the City of Washington, and has never done any business of that character in the State of Pennsylvania, (Record, p. 32). This Railway Company was formed by a merger with two other companies, to wit, the Washington, Arlington & Falls Church Railway Company and the Washington, Alexandria & Mt. Vernon Railway Company, all of which were organized under the laws of the State of Virginia, (Record, p. 13). The merger agreement aforesaid (Record, p. 13) shows the lines of railway operated by the several parties to the agreement and by the Washington-Virginia Railway Company after the agreement.

The President and Treasurer of the Washington-Virginia Railway Company lived in Philadelphia, and had an office #1307 Real Estate Trust Building, Philadelphia, where were kept, for the convenience of the President and Treasurer of the Company, books for the transfer of the stock of the Company, and certain records of expenses, showing the cost of operation of the road. (Record, pp. 32-33.) There was kept an office at the corner of 12th and Pennsylvania Ave., N. W. Washington, D. C., "for the general business of the railway company." The Girard Trust Company of Philadelphia was the registrar of the stock of the Company, and the stock transfer book of the Company was kept in the office in Philadelphia and stock was sent from there to the Girard Trust Company for registration (Record, p. 33). No business was transacted at the office 1307 Real Estate Trust Building, with citizens of Pennsylvania, other than the transfer of stock which may have been sent there for that purpose (Record, p. 34). At times the Company had large sums of money which were deposited in several banks in the City of Philadelphia, the money being saved for the interest upon the mortgage when due, and for the purpose of paying dividends (Record, pp. 34-5).

Bills for the operating expenses of the Company were approved at the Washington office, and were sent to the Treasurer in Philadelphia, who made up vouchers and checks to cover the same, which were sent to Washington and the bills were paid from the Washington office (Record, p. 35).

All the information upon which entries were made in the books which were kept in Philadelphia "for the convenience of the President and the Treasurer", was sent from the office of the Company in Washington (Record, p. 35).

It appears that Clarence P. King leased several offices on the thirteenth floor of the Real Estate Trust Building, in Philadelphia, and allowed the President and Treasurer of the Washington-Virginia Railway Company to use the furniture, fixtures, etc., in the office and to have desk room therein, upon the payment of \$50.00 per month, but the name of the defendant was not on the door nor does it appear in the telephone book. (Record, p. 74.) There was no written agreement covering the occupation of the office by the President and Treasurer of the Washington-Virginia Railway Company, but it was "just month to month", by sufferance, (Record, pp. 37-8).

The Washington-Virginia Railway Company took out no license to do business in the State of Pennsylvania, and no evidence was produced showing that the officers of the Company were doing business with any citizen of Pennsylvania, but the office was used for correspondence between the President and Treasurer of the Company and the officers of the Company at its general office in Washington, D. C., and the books kept at the office in Philadelphia were for the convenience of the President and Treasurer.

Every meeting of the Board of Directors during the Presidency of Frederick H. Treat was held at the Company's office in Washington, at the corner of 12th & Pennsylvania Ave., N. W., except one meeting, which was held at Camden, N. J., and no meeting was held in Philadelphia (Record, p. 52). The principal office of the Company was at Mt. Vernon, Fairfax County, Virginia (Record, p. 53), and the stockholders' meetings were held there (Record, p. 54). Bank accounts were kept at Alexandria, Virginia, to which money was sent from the depositary of the Company in Washington, the Commercial National Bank, (Record, p. 54).

Bills and vouchers for operating expenses were sent from Washington to the Treasurer in Philadelphia, where they were signed and returned to the Washington office, and the checks to cover the operating expenses were on the Commercial National Bank, of Washington, D. C. (Record, p. 49).

An agent of the Company resides at Mt. Vernon, Virginia, who is the designated agent upon whom process may be served, (Record, p. 75). There were kept in the office in Washington a cash book, showing the daily receipts accruing from the operation of the road and the collection of all accounts due the Company; the operating record, showing the cost of operation; a record of the time of the employes, being a pay-roll time record; a statement of all claims accruing and payment thereof; a record of car hours, mileage and sundry statistics; and at Four Mile Run, Virginia, and Lacy, Virginia, were kept different records, covering the receipt and disbursement of materials and supplies, (Record, pp. 77-8). There was kept at Philadelphia, a register showing the entry of receipts, as received from the Washington office, and also an entry of all bills received from the Washington office, and such over-head expenses as were necessary to arrive at the final net earnings of the Company. These records were kept under the direction of the Treasurer. The stock transfer book was also kept in Philadelphia, and the stock ledger and certificate book, and the information from which these books were kept, came in reports from the Washington office, at 12th and Pennsylvania Ave., N. W. (Record, p. 78).

Ninety-nine per cent. of the correspondence conducted in the Philadelphia office was with the operating office in Washington, with reference to information sent by the Washington office (Record, p. 82). In cor-

respondence, Frederick H. Treat, President of the Company, used stationery headed:

"Washington-Virginia Railway Company,
1307 to 1310 Real Estate Trust Building,
Office of the President,
Philadelphia, October 21, 1911."

(Record, p. 73); and envelopes were used upon which were printed in the upper left-hand corner: "Return in 15 days to 1307 Real Estate Trust Building, Philadelphia, Pa." (Record, p. 74); and stationery was also used headed: "Washington-Virginia Railway Company, 1202 Penna. Ave., N. W. Washington, D. C." (Record, p. 83).

The books in Philadelphia were kept there in accordance with the By-Laws of the Company, which provided that the Treasurer "shall keep such books as pertain to the office of Treasurer, and also the stock certificate books, stock ledgers and stock transfer books, unless their custody be otherwise assigned by the President and the Board of Directors" (Record, p. 90). The seal of the Company was kept, in accordance with the By-Laws, by the President at the office in Philadelphia, but was taken to Washington when necessary for use there (Record, p. 90).

In the "City and Business Directories of Philadelphia", the name of Washington-Virginia Railway Company, 1307 Real Estate Trust Building, appeared for the years 1911-12, but where the information came from upon which this entry was made in the Directories, is not clear (Record, pp. 91-94).

On May 2, 1911, an application was made by the Washington-Virginia Railway Company, by Clarence P. King, then President, for the listing of the Company's stock on the Philadelphia Stock Exchange, in which it is stated, (Record, p. 66): "Stock is trans-

ferred at the Company's general office, 1307 Real Estate Trust Building, Philadelphia, and registered by the Girard Trust Company, Philadelphia, Registrar"; and (Record, p. 72):

"Offices: Principal, Mt. Vernon, Virginia.
General and Transfer, 1307 Real Estate Trust
Building, Philadelphia.
Washington, 1202 Pennsylvania Avenue."

On a listing of the bonds of the Washington, Alexandria & Mt. Vernon Railway Company, one of the predecessors of defendant, upon the Washington Stock Exchange on December 26, 1906, it was stated by Clarence P. King, President, that "the principal office of the Company is located at Mt. Vernon, Virginia, with branch offices in Washington and Philadelphia" (Record, p. 112); but the Washington, Alexandria & Mt. Vernon Railway Company was an entirely different corporation, which was merged with the Washington-Virginia Railway Company by agreement of September 21, 1910, (Record, p. 118, and we can see no relevancy of this evidence offered by plaintiff.

Upon the above facts, the District Court of the United States overruled the motion to quash the return of the Marshal, and entered judgment against the defendant.

ASSIGNMENTS OF ERROR.

To the action of the District Court, the defendant filed with its petition for writ of error, the following assignments of error (Record, p. 142):

"(First.) The Court erred in overruling defendant's motion to quash the return of service made by the United States Marshal to the writ of summons in this cause and to set aside said return and to dismiss this cause for want of jurisdiction.

(Second.) The Court erred in conceiving that it had jurisdiction over the person of the defendant in this cause.

(Third.) The Court erred in conceiving that it had jurisdiction to render a personal judgment against defendant and in conceiving that the service of summons herein was such as to give the Court power or jurisdiction to enter judgment against defendant.

(Fourth.) The Court erred in that after it had overruled and denied the motion aforesaid to set aside the service of summons, it rendered judgment against this defendant, because said Court had no power or jurisdiction to render said judgment.

(Fifth.) The Court erred in conceiving and holding that Frederick H. Treat, the person upon whom the summons was attempted to be served, was authorized to receive service of process on behalf of defendant.

(Sixth.) The Court erred in conceiving and holding that defendant was so engaged in the transaction of business within the Eastern District of Pennsylvania as to make it amenable to this suit and to process herein."

ARGUMENT.

I. THE COURTS HAVE UNIFORMLY HELD THAT THE ONE PREREQUISITE TO SERVICE UPON A CORPORATION IN A STATE OR DISTRICT WHERE IT WAS NOT CHARTERED, BUT WHERE IT WAS REQUIRED BY STATE STATUTES TO BE PRESENT FOR PROCESS BEFORE DOING BUSINESS, IS THAT IT SHOULD BE

SHOWN THAT THE CORPORATION IS DOING, IN SUCH STATE, THROUGH DULY AUTHORIZED OFFICERS OR AGENTS, A SUBSTANTIAL PART OF THE BUSINESS FOR WHICH THE CORPORATION WAS CHARTERED.

The Court below, in its opinion filed in this case, reviewed the facts presented by the depositions, and concluded (p. 139):

“Sufficient has been shown to establish the fact that the defendant maintained an office in this district at which, through its president, treasurer and book-keeper, it carried on an important and essential part of its business in its corporate capacity.”

The Court’s opinion is, therefore, more in the nature of a conclusion presented to this Court for review, than a statement of the law applicable to the case. It does not set forth any principle or rule of law under which such service of process can be justified. The collecting together of a number of minor incidents none of which amounts to a “doing of business” under the authorities, cannot give to the aggregate facts a greater weight than they separately carry. Even considered under the rule of circumstantial evidence the chain is no stronger than its weakest link, and the fact that a corporation has done within a State a number of things, none of which constitute a “doing of business” is certainly no evidence that the corporation has been “doing business” within the State so as to there subject itself to service of process.

While the Courts of the United States have often stated that each case must be determined upon its particular facts, this was, of course, never intended to mean that the facts presented were to be reviewed in

any other way than by the light of certain well established principles of law. And a review of the cases shows that this court and the Federal Courts generally have very clearly indicated the tests which must be applied to the facts presented, before a corporation can be held to have subjected itself to process, out of the State wherein it was chartered. As the Court below, in our opinion, has entirely failed to keep within the reason of the rule allowing such service in certain cases, or to impose upon the facts the tests prescribed by the authorities, it may be well to discuss, briefly, the limits which the Courts have imposed upon such extraordinary service, and to apply the same to the facts brought up by the depositions filed in this case.

As the mere citation of individual cases would not bring out the substantial uniformity of the Federal Courts on this question, it may be well to present a brief discussion of the past and present state of the law as evidenced by these authorities.

1. The original rule as to service of process upon corporations was that a corporation exists only where it is chartered, and cannot "migrate" elsewhere; and that it can therefore be served with process only in the State where it is chartered.

This was the rule laid down by Chief Justice Taney in *Bank of Augusta v. Earle*, 13 Pet. 519, p. 586. And this rule is still in force as a broad principle of law, subject to the qualification next stated:

2. The above rule has been qualified by the principle that a State has authority to prescribe the terms under which a foreign corporation may do business within its limits, and therefore has the right to require that such corporations, before being allowed

to do business within its limits, shall consent to be found therein for service of process by the designation of an agent there upon whom process may be served, or by such other proper means as the State, through its statutes, may require.

That such a state requirement was a reasonable and proper one, and that service made under such a state statute upon a designated agent was a valid service, was held in *Lafayette Ins. Co. v. French*, 18 How. 404, and has never since been in doubt.

3. A further extension of the rule arose where certain corporations were actually doing business within a State other than that of their origin, but had not designated an agent therein or otherwise provided for service of process there, although the State's statutes provided for service of process in the State upon foreign corporations doing business in the State. In such cases, it was held that the corporation, by doing business within the State, subjected itself to service of process upon officers or agents of the corporation sent into the State by the corporation for the purpose of there doing a substantial amount of its business.

This extension (which marks the limit of the rule) was endorsed by the Supreme Court in *St. Clair v. Cox*, 106 U. S. 350. In that case, however, the extent of the Court's ruling was carefully qualified. Thus the Court said (p. 355):

"This doctrine of the exemption of a corporation from suit in a State other than that of its creation was the cause of much inconvenience, and often of manifest injustice. The great increase in the number of corporations of late years, and the immense extent of their business, only made

this inconvenience and injustice more frequent and marked. Corporations now enter into all the industries of the country. The business of banking, mining, manufacturing, transportation, and insurance is almost entirely carried on by them, and a large portion of the wealth of the country is in their hands. Incorporated under the laws of one State, they carry on the most extensive operations in other States. To meet and obviate this inconvenience and injustice, the legislatures of several States interposed, and provided for service of process on officers and agents of foreign corporations doing business therein. Whilst the theoretical and legal view, that the domicile of a corporation is only in the State where it is created, was admitted, it was perceived that when a foreign corporation sent its officers and agents into other States and opened offices, and carried on its business there, it was, in effect, as much represented by them there as in the State of its creation. As it was protected by the laws of those States, allowed to carry on its business within their borders, and to sue in their courts, it seemed only right that it should be held responsible in those courts to obligations and liabilities there incurred.

“* * * * There would seem, therefore, to be no sound reason why, to the extent of their agency, they should not be equally deemed to represent it in the States for which they are respectively appointed when it is called to legal responsibility for their transactions.”

And again (p. 356):

“And such condition and stipulation may be implied as well as expressed. If a State permits a foreign corporation to do business within her limits, and at the same time provides that in suits against it for business there done, process shall be served upon its agents, the provision is to be deemed a condition of the permission; and corporations that subsequently do business in the

State are to be deemed to assent to such condition as fully as though they had specially authorized their agents to receive service of the process. Such condition must not, however, encroach upon that principle of natural justice which requires notice of a suit to a party before he can be bound by it. It must be reasonable, and the service provided for should be only upon such agents as may be properly deemed representatives of the foreign corporation."

In other words, this Court in *St. Clair v. Cox*, went no further than to hold that a corporation would be taken to have appeared, consentingly, in a State other than that of its origin, when it knowingly sent agents into such other state for the express purpose of carrying on its business there; and that the consent which was inferred where such agents were appointed under the requirement of a State law, would also be inferred where the agents were sent not in compliance with any State requirement, but for the corporation's own business purposes.

The language of the Court also indicated that the business referred to was the business for which the corporation was chartered, and that some substantial doing of business was contemplated. It will be noted that the whole rule proceeds upon the consent, express or implied, of a corporation, to be served in a State other than that in which the corporation is chartered. The Courts, in holding that such consent should be implied, have consistently drawn the implication from the fact that the corporation was actually "doing business" within the State; in other words, the theory of the law has always been that, since the State might require the corporation to be present for suit as a prerequisite to doing business within the State, and since the corporation might lawfully accept such terms, the

corporation, by entering the State and doing business therein would be presumed to have accepted the terms imposed by the State and would be subject to process there, although it had not complied with the technical requirements of the State law.

Thus in *Ex Parte Schollenberger*, 96 U. S., 369, the Court said, (p. 377):

"States cannot by their legislation confer jurisdiction upon the courts of the United States, neither can consent of parties give jurisdiction when the facts do not; but both State legislation and consent of parties may bring about a state of facts which will authorize the courts of the United States to take cognizance of a case. *Ex parte McNeil*, 13 Wall. 236. Thus, if the parties to a suit, both plaintiff and defendant, are in fact citizens of the same State, an agreement upon the record that they are citizens of different States will not give jurisdiction. But if the two agree that one shall move into and become a citizen of another State, in order that jurisdiction may be given, and he actually does so in good faith, the Court cannot refuse to entertain the suit. So, as in this case, if the legislature of a State requires a foreign corporation to consent to be 'found' within its territory, for the purpose of the service of process in a suit, as a condition to doing business in the State, and the corporation does so consent, the fact that it is found gives the jurisdiction, notwithstanding the finding was procured by consent. The essential fact is the finding, beyond which the court will not ordinarily look. A corporation cannot change its residence or its citizenship. It can have its legal home only at the place where it is located by or under the authority of its charter; but it may by its agents transact business anywhere, unless prohibited by its charter or excluded by local laws. Under such circumstances, it seems clear that it may, for the purpose of secur-

ing business, consent to be 'found' away from home, for the purposes of suit as to matters growing out of its transactions."

In *Swann v. Mutual Reserve Fund Assn.*, 100 Fed. 922, the Court said, (p. 924) :

"In order to make service of process good, as a general rule it must, in the case of a corporation, be made upon some one of its officers or agents, or upon some person upon whom it shall have consented that process might be served on its behalf; in short, upon one who is, at least, at the time an agent of the defendant in some proper sense of that term as applied to the service of process."

And again, (p. 925) :

"In order to give jurisdiction of the person of a defendant, whether a natural person or a corporation, there must be a service upon him of process,—that is, a notice to appear and answer,—and the thing done which is claimed to be a service must come up to this general requirement. In the case of an individual, this service can only be made upon him in person. Nothing else can be sufficient or valid. In the case of a corporation, it is equally essential that service shall be upon the defendant, which necessarily involves service upon some person, who, *pro hac vice*, stands in the place of the corporation, and as its representative, for this purpose, by its authority and consent, or by operation of the law of a state, while the corporation is actually doing business therein. Unless service is made in such a way as to bring it within that rule, it is not sufficient to give jurisdiction over the person of the corporation, and, unless the corporation is doing business therein, the state itself has no power over it, and can give none to its courts. When it ceases to do business in a state, the laws of the latter cease to have any force over it or its affairs. It

is a general and well-established rule that an attempt to secure service upon a corporation in a state where it does not reside or do business, by service, even upon its president, while casually in that state, will not be valid. *Goldey v. Morning News*, 156 U. S. 518, 15 Sup. Ct. 559, 39 L. Ed. 517. This rule is based, not only upon the essential principles of the law of corporations, but upon the fundamental doctrine that such service would not be due process of law. * * * * Another fundamental proposition is that a defendant is ordinarily entitled to be sued at his home, and consequently that jurisdiction of his person cannot be secured by any foreign tribunal, unless he is in person served with process within its jurisdictional limits. These propositions demand that any statute which may tend to trench upon them, even in cases of corporations, shall be strictly construed."

And again, (p. 928):

"There can be service of process upon a corporation in such form as to give jurisdiction over its person in those states only which come within one or the other of the following classes, namely—First, that wherein the Corporation resides by the law of its creation; or, second, that in which it is actually doing business at the time of the service, and derives a residence from that circumstance. Here the corporation, by the law of its creation, resides in the State of New York, and was not doing business, and could not do business, in Kentucky at the time of the service."

In *Doe v. Springfield, &c. Co.*, 104 Fed. 684, the Court said, (p. 687):

"The business agent mentioned in the statute means one bearing a close relation to the duties of managing agent, cashier, or secretary of the corporation. It must be an agent who is ap-

pointed, designated, or authorized to transact and manage one or more distinct branches of business, which may be, and is conducted and carried on by the corporation within the state where the service is made,—one who stands in the shoes of the corporation in relation to the particular business managed, conducted, and controlled by him for the corporation. To constitute a managing or business agent upon whom service of summons could be made, the agent must be one having in fact a representative capacity and derivative authority, and not one created by construction or implication, contrary to the intention of the parties.”

In Central Grain & Stock Exchange v. Board of Trade, 125 Fed. 463, the Court said, (p. 466) :

“The defendant below was a corporation of the state of Delaware. There could be no presumption of its presence within the state of Illinois. There were but two conditions in which the court below could obtain jurisdiction over the corporation: The one by voluntary appearance—a condition which did not occur; the other, if the corporation prosecuted its business in the state of Illinois, by service of process upon some officer or agent in that state appointed to there transact and manage its business and representing the corporation in such state. Service upon an agent of a foreign corporation is not service upon the corporation unless it be engaged in business in the state where such agent is served and he be appointed to act for it there.”

In Carpenter v. Westinghouse, 32 Fed. 434, the Court (Brewer, J.) said, (page 436) :

“The true rule is that the corporation does not come into the state, is not found in any state, unless in some way it establishes an office or agency for the transaction of the business for which it is organized, and when that is done, it has

no right to say it is not found within the state. Unless it goes to that extent it may say: 'I have not entered into or become a part of the citizenship or an inhabitant of that state'."

In *United States v. American Bell Telephone Company*, 29 Fed. 17, the Court, per Jackson, J., afterwards Mr. Justice Jackson, said, (p. 35):

"The judiciary acts (Rev. St. §739) and act of March 3, 1875, providing that no civil suit or action shall be brought against any person outside of the district in which he resides or may be found at the time of the service of process, do not affect the general jurisdiction of this court, but merely confer a personal privilege or exemption upon the defendant which can be waived and is waived by a foreign corporation, not only by a voluntary appearance to the suit, but by doing business in a state imposing the condition or liability to suit there by service of process on its agent. It cannot be held sufficient to give this court jurisdiction *in personam* over a foreign corporation that it has property rights, however extensive, within the district, or that it has pecuniary interests, however valuable, in business managed and conducted by others. It must itself be carrying on business in its own right, on its own responsibility, and for its own account, and through or by means of its own agents, officers, or representatives, in order to bring it within the operation of the laws of a state other than that in which it is incorporated, making it amenable to suit there as a condition of its doing business in such state."

And again, (p. 37), the Court said:

"When a foreign corporation carries on its corporate business, or some substantial part thereof, in this state, by means of an agent or representative appointed to act here, and having the

charge and management of such business, it impliedly assents to be found and sued here in the person of such agent. Doing business in a state imposing such condition or liability to suit as this Ohio statute is treated by the authorities as an agreement or consent on the part of the foreign corporation to be 'found' here, within the meaning of the federal judiciary acts, for the purpose of suit, and in the mode designated, if just and reasonable."

It will be noted that in the above cases the courts have held that the process was only justified upon the implied consent of the corporation, to be served; that such implied consent was obtained from the fact that it was in fact, and of design doing a substantial part of its ordinary business in a State, where in order to do such business, it was required to be present for process; and that the right to serve such process was under an extension of the usual rule of law, and would be strictly construed and applied.

It will also be noted that the Courts never intended to extend to the general public the right to force a corporation to suit at any and every place where its officers or agents might be found, or where it maintained, for its convenience, an office, a tract of land, or other property, or a bank account. The hardship involved by the extension of the rule is obvious. The courts have not lightly laid down a rule requiring that a corporation should be required to produce its witnesses and defend its cause in a distant locality, to which it must bring its counsel, witnesses and records, and maintain them there for considerable periods of time, merely because officers or agents, neither authorized to nor doing its ordinary business, might be found there. Such a state of the law would afford to litigants the opportunity to put corporation defendants to the alterna-

tive of submitting to an unjust claim or undergoing expense or business loss, often in excess of the amount at issue, and such a rule has never been announced or contemplated. The corporation is present only because it is required to be present to do business, and because it is in fact doing its business there.

4. The State of Pennsylvania requires all foreign corporations doing business in the State to designate the Secretary of the Commonwealth as their authorized agent for service of process.

The Act of June 8, 1911, (P. L. 710), which superseded a former statute to the like effect, provides that:

“Section 2. Every such foreign corporation, before doing any business in this Commonwealth, shall appoint, in writing, the Secretary of the Commonwealth and his successor in office to be its true and lawful attorney and authorized agent, upon whom all lawful processes in any action or proceeding against it may be served; and service of process on the Secretary of the Commonwealth shall be of the same legal force and validity as if served on it; and the authority for such service of process shall continue in force so long as any liability remains outstanding against it in the Commonwealth.”

The State has, therefore, made amenable to process foreign corporations doing business within its limits, as a prerequisite to the doing of such business, and the present statute of Pennsylvania is in line with the extension of the rule as to service of process announced in *St. Clair v. Cox, supra*.

5. The whole question to be decided, therefore, is whether the Washington-Virginia Railway Company, plaintiff-in-error in this court, was doing business in the State of Pennsylvania at the time when process was served upon its President.

Since the corporation is required by the State to agree to service within the State as a prerequisite to doing business therein, the only question remaining is whether the corporation was doing business within the state and within the Judicial District, when the alleged service was made. In determining this question the United States courts have reserved to themselves the right to pass upon what is a doing of business within a State. Thus in *Barrow S. S. Co. v. Kane*, 170 U. S. 100, this Court said, (p. 111) :

“On the other hand, upon the fundamental principle that no one shall be condemned unheard, it is well settled that in a suit against a corporation of one State, brought in a court of the United States held within another State, in which the corporation neither does business nor has authorized any person to represent it, service upon one of its officers or employees found within the State will not support the jurisdiction, notwithstanding that such service is recognized as sufficient by the statutes or the judicial decisions of the State. *St. Clair v. Cox*, 106 U. S. 350; *Fitzgerald Co. v. Fitzgerald*, 137 U. S. 98, 106; *Goldey v. Morning News*, 156 U. S. 518. See also *Mexican Central Railway v. Pinkney*, 149 U. S. 194.”

So, also, in *St. Louis, &c. Ry. v. Alexander*, 227 U. S., 218, this Court said (p. 227); through Mr. Justice Day:

“This court has decided each case of this character upon the facts brought before it, and has laid down no all embracing rule by which it may be de-

terminated what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. In a general way, it may be said that the business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served, and in which it is bound to appear when a proper agent has been served with process."

And again in *International Harvester v. Kentucky*, 234 U. S., 579, this Court said, (p. 583):

"For some purposes a corporation is deemed to be a resident of the state of its creation, but when a corporation of one State goes into another in order to be regarded as within the latter, it must be there by its agents authorized to transact business in that State. The mere presence of an agent upon personal affairs does not carry the corporation into the foreign State. It has been frequently held by this Court, and it can no longer be doubted, that it is essential to the rendition of a personal judgment, that the corporation be doing business within the State. *St. Louis S. W. Ry. vs. Alexander*, 227 U. S. 218-226, and cases there cited. As was said in that case, each case must depend upon its own facts, and their consideration must show that this essential requirement of jurisdiction has been complied with and that the corporation is actually doing business within the State."

It may safely be assumed, however, that this Court intended that the special facts governing each case should be considered in the light of those recognized principles of law which had been announced by this and the lower Federal Courts, in determining similar cases, and did not intend that each district court should have arbitrary discretion to determine the extent of its own jurisdiction.

6. In the course of the many decisions upon this question certain principles have been laid down which may be briefly stated.

(a) *The business done must be the business for which the corporation is chartered.*

In *Green v. Chicago, B. & Q. Ry. Co.*, 205 U. S., 530, it appeared that defendant was an Iowa Ry. corporation. The eastern point of its line was at Chicago. It rented an office in Philadelphia, and employed there a district freight and passenger agent, who had under him several clerks and traveling freight and passenger agents. Upon application for tickets beyond Chicago, the agent received money, and procured tickets from lines to Chicago for the applicant, and issued prepaid orders for ticket on defendant's line beyond Chicago. He also sold orders to railroad employees at reduced rates and issued bills of lading to be in force when the freight was actually received by defendant. The Court said, (p. 533):

"It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers. In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver, &c. Railroad Co. v. Roller*, 100 Fed. Rep. 738, and *Tuchband v. Chicago, &c. Railroad*, 115 N. Y. 437. The facts in those cases were similar to those in the present case. But in both cases the action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts.

"The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute 'do-

ing business' in the sense that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it."

In *Cooper Mfg. Co. v. Ferguson*, 113 U. S., 727, the Court said, (pp. 734-5):

"In a case involving the construction of the statute, the Supreme Court of Colorado held that a foreign corporation might, without complying with the provisions of the statute, maintain an action in the courts of the State to recover damages for trespass to its real estate. The Court said: 'The prohibition extends to doing business before the compliance with the terms of the statute. We do not think this an abridgment of the right of a foreign corporation to sue. It extends only to the exercise of the powers by which it may be said to ordinarily transact or carry on its business. To what extent the exercise of these powers is affected we do not decide.' *Utley v. The Clark-Gardner Mining Co.*, 4 Colorado, 369. So it is clear the statute cannot be construed to impose upon a foreign corporation limitations of its right to make contracts in the State for carrying on commerce between the States, for that would make the act an invasion of the exclusive rights of Congress to regulate commerce among the several States. *Paul v. Virginia*, 8 Wall. 168. The prohibition against doing any business cannot, therefore, be literally interpreted.

Reasonably construed, the Constitution and statute of Colorado forbid, not the doing of a single act of business in the State, but the carrying on of business by a foreign corporation without the filing of the certificate and the appointment of an agent as required by the statute. The Constitution requires the foreign corporation to have one or more known places of business in the State before doing any business therein. This implies a purpose at least to do more than one act of busi-

ness. For a corporation that has done but a single act of business, and purposes to do no more, cannot have one or more known places of business in the State. To have known places of business it must be carrying on or intending to carry on business. The statute passed to carry the provision of the Constitution into effect, makes this plain, for the certificate which it requires to be filed by a foreign corporation must designate the principal place in the State where the business of the corporation is to be carried on. The meaning of the phrase 'to carry on' when applied to business is well settled. In Worcester's Dictionary the definition is 'To prosecute, to help forward, to continue, as to carry on business.' The definition given to the same phrase in Webster's Dictionary is: 'To continue, as to carry on a design; to manage or prosecute, as to carry on husbandry or trade.' The making in Colorado of the one contract sued on in this case, by which one party agreed to build and deliver in Ohio certain machinery and the other party to pay for it, did not constitute a carrying on of business in Colorado.

"The obvious construction, therefore, of the Constitution and the statute is, that no foreign corporation shall begin any business in the State, with the purpose of pursuing or carrying it on, until it has filed a certificate designating the principal place where the business of the corporation is to be carried on in the State, and naming an authorized agent, residing at such principal place of business, on whom process may be served. To require such a certificate as a prerequisite to the doing of a single act of business when there was no purpose to do any other business or have a place of business in the State, would be unreasonable and incongruous."

In *Earle v. Chesapeake & Ohio Ry. Co.*, 127 Fed. 235, a case in the Eastern District of Pennsylvania, the Court said, (p. 236):

"In the statement of claim, which was filed when the summons was issued, the defendant is described as a railway corporation of the state of Virginia. *Prima facie*, therefore, its business of transportation is conducted there; and although no doubt, it may do part of its business in this state, there is certainly no presumption that this is true. The corporation cannot be here for any purpose unless it is transacting the business for which it was organized. The mere presence of some of its officers or agents does not justify the conclusion that they have brought the corporation with them. That invisible and intangible entity only exists in thought, and is regarded as present in a foreign jurisdiction only when its officers or other agents cross the line of that jurisdiction for the purpose of carrying on the corporate enterprise, and actually do carry it on, within the foreign boundaries. A Virginia corporation cannot be sued in this district as long as it keeps its agents and its property at home, because it is not within reach of the court's process; and therefore, to make a valid service upon it, the fact must exist that the corporation has voluntarily crossed the state line, and by doing business here has placed itself within the power of the state and federal tribunals."

In Doe v. Springfield, &c. Co., 104 Fed. 684, the Court said, (p. 687):

"Legal service of process upon a corporation, which will give a court jurisdiction over it, can be made only in the state where it resides by the law of its creation, or in a state in which it is actually doing business at the time of service, in the manner prescribed by the statutes of that state or of the United States. The question as to what kind of business by a foreign corporation within a state will justify a finding that it is engaged in business therein, and validate a service upon its agent, has been very thoroughly and elab-

orately discussed in the circuit and supreme courts of the United States, and the general concensus of opinion is that the corporation must transact within the state some substantial part of its ordinary business by its officers or agents appointed and selected for that purpose, and that the transaction of an isolated business act is not the carrying on or doing business in a state."

In *Carpenter v. Westinghouse, &c. Co.*, 32 Fed. 434, the Court said, (p. 436) :

"And the argument says that in the county in which Burlington is situated this defendant as a corporation had an agent there, its principal officers were there, and it was transacting business, engaged in the business of showing its manufactures for the purpose of advertisement. But that, we think, is not the true import of the section. It refers to cases in which a foreign corporation establishes an agency or office in any county in this state for the purpose of carrying on the business for which the corporation is organized."

(b) *Some substantial business must be done; mere isolated instances are insufficient.*

In *Hunter v. Mutual Life Insurance Co.*, 218 U. S., 573, the Court said, (p. 583) :

"It is, however, contended that defendant 'persisted in doing business in the State and was so found at the time of the service of process in question.' Four instances are adduced to sustain the contention, two of which occurred in 1899 and two in 1902. These instances have no relation to one another and no relation to the transactions upon which the judgments were based. Between the first two and the last two there was an interval of three years, and yet it insisted that there was such connection between them that they constituted doing business continuously in the State, and the

defendant was hence precluded from revoking its power of attorney to the insurance commissioner. The contention of plaintiff, so far as based on the instances adduced, encounters a great difficulty. They were not new business. They related to old transactions, and were intended only to fulfil their obligations. This was the plain duty of defendant, a duty which it could not evade nor could the State even prevent it. *Bedford v. Eastern Building & Loan Association*, 181 U. S., 227. Between doing business for such purposes and doing business generally there is quite a difference."

In *St. Louis S. W. Ry. Co. v. Alexander*, 227 U. S. 218, the Court said, (p. 227):

"This court has decided each case of this character upon the facts brought before it and has laid down no all-embracing rule by which it may be determined what constitutes the doing of business by a foreign corporation in such manner as to subject it to a given jurisdiction. In a general way it may be said that the business must be such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served and in which it is bound to appear when a proper agent has been served with process."

In *St. Louis Wire Mill Co. v. Hemphill*, 32 Fed. 802, the Court said, (p. 805):

"The question as to what sort of business transactions by a foreign corporation within a state will justify the finding that it is engaged in business therein, and validate a service of process had upon its agent, was also elaborately considered in the case of *U. S. v. Telephone Co.*, by Judge Jackson, reported in 29 Fed. Rep. 37-41. It was there held that a corporation must transact within the state some substantial part of its ordinary business through an agent appointed for that pur-

pose. According to the rule announced in that case, it is clear that if a corporation merely makes an occasional purchase of goods in a foreign state, but neither keeps an office or maintains an agent therein for the transaction of its business, it cannot be said 'to be engaged in business in such state,' and for that reason service of process upon an officer or agent of a corporation found in such state will not be effectual, in the federal courts at least, to confer jurisdiction over the corporation."

The same rule has been stated in many cases in the lower Federal Courts. See: *Good Hope Ry. Co. v. Railway, &c. Co.*, 22 Fed. 635; *Reifsnider v. American, &c. Co.*, 45 Fed. 433; *Craig v. Welsh Motor Car Co.*, 165 Fed. 534; *Doe v. Springfield, &c. Co.*, 104 Fed. 684; *Case v. Smith*, 152 Fed. 730; *Eirich v. Donnelly Contracting Co.*, 104 Fed. 1; *Clews v. Woodstock Iron Co.*, 44 Fed. 31; *U. S. Graphite Co. v. Pacific Graphite Co.*, 68 Fed. 442; *Hoyt v. Ogden, &c. Cement Co.*, 185 Fed. 889; *Ladd Metals Co. v. American Mining Co.*, 152 Fed. 1008; *Louden Machinery Co. v. American, &c. Co.*, 127 Fed. 1008.

(c) *The business must be more than mere solicitation of business or advertising in the interest of the company's business.*

In *Green v. Chicago, &c. Ry.*, 205 U. S. 530, the Court said, (p. 533):

"The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute 'doing business' in the sense that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it."

In *N. K. Fairbank Co. v. Cincinnati*, 54 Fed. 420, soliciting agents were supplied by the company with offices, on the doors of which the corporation's name was printed. It was held that no valid service could be had upon such agents.

In *Goepfert v. Compagnie Generale Transatlantique*, 156 Fed. 196 (E. D. Pa.), the facts were stated as follows, (p. 197):

"The plaintiff filed an answer to the petition, asserting that business was done in this jurisdiction by Raymond, Whitcomb & Co. as agents, and thereupon certain testimony was taken, from which the following undisputed facts appear: The defendant is a corporation under the laws of France, having its principal place of business in the city of Paris. It owns and operates a line of steamships plying between Havre and the city of New York. It has a general agent in New York to transact all its business in the United States and Canada. Raymond, Whitcomb & Co. are tourists and ticket agents, having offices in the principal cities of the United States and Europe. They arrange tours, and sell tickets, over the principal railway and steamship lines of the world, including the tickets of the defendant, which they sell in the city of Philadelphia. For such sale they are paid a commission, and also \$600 on account of their office rent. They are not authorized to make any other contract on behalf of the defendant. One of the defendant's printed circulars, which gives information in regard to tickets, names Raymond, Whitcomb & Co. among eight principal agencies in the United States and Canada; this prominence being due to the fact that, with few exceptions, they sell more tickets than other agents. When an application for passage is received at the Philadelphia office of Raymond, Whitcomb & Co., it is their custom to telegraph to New York for the desired cabin accommoda-

tions. They have the defendant's tickets for sale in their Philadelphia office, as well as the tickets of many other steamship and railway companies. They print the defendant's name on their door, with the names of other railway and steamship lines. When they sell one of the defendant's tickets, the purchase money is put into their general account, from which they remit periodically to the defendant, as they do in the case of other railway and steamship companies, whose tickets they also sell. The defendant has other ticket agencies in Philadelphia, and has about 3,000 throughout the United States and Canada. Except the sale of tickets in Pennsylvania, as above set forth, no business is done on behalf of the defendant within the jurisdiction of this court."

Upon these facts, it was held that the company was not doing business in the Eastern District of Pennsylvania, so as to justify service of process upon it.

In *Carpenter v. Westinghouse Air-Brake Co.*, 32 Fed. 434, a foreign corporation manufacturing an air-brake, brought into the State a train of cars equipped with the brake for exhibition and advertising purposes. Certain of its officers were on the train, but no freight or passenger was carried. The Court said (p. 436):

"In one sense it is carrying on a business, that is it is engaged in advertising, but can it be said it is engaged in the business for which it is incorporated? Can it be said to have established an office or agency in this state for the carrying on of that business? If we say that the mere matter of advertising a business is the introduction of that business in the state, it would follow that every corporation located elsewhere that should send its circulars into the state, send newspapers with its advertisement, would be engaged in its business in that state, and to be found there for purposes of suit."

And see:

Green v. Chicago, B. & Q. Ry., 205 U. S. 530; Maxwell v. Atchison &c. Ry. Co., 34 Fed. 286; Union Ass'd. Press v. Times-Star Co., 84 Fed. 419; Boardman v. S. S. McClure Co., 123 Fed. 614; Buffalo Glass Co. v. Mfgr's. Glass Co., 142 Fed. 273; Case v. Smith &c. Co., 152 Fed. 730.

In *International Harvester vs. Kentucky*, 234 U. S. 579, the Court states the facts of the case at pages 584-585, from which it was obvious that the agents of the Harvester Company, a foreign corporation, were doing more than the mere solicitation of business in the State of Kentucky. In fact the Court says (p. 587):

"In the case now under consideration there was something more than the mere solicitation. In response to the orders received there was a continuous course of shipment of machines into Kentucky. There was authority to receive payment in money, check or draft, and to take notes payable at banks in Kentucky."

Upon the facts set forth, this Court reaffirms its decision in the case of Green vs. Chicago, Burlington & Quincy R. Co., 205 U. S., 530, and says (p. 585):

"Taking this as the method of carrying on the affairs of the Harvester Company in Kentucky, does it show a doing of business within that State to the extent which will authorize the service of process upon its agents thus engaged?

"Upon this question the case is a close one but upon the whole we agree with the conclusion reached by the Court of Appeals that the Harvester Company was engaged in carrying on business in Kentucky."

The facts of the case, however, show that the decision is not in conflict with the rule as previously announced.

(d). *It should be more than such small incidental matters as would ordinarily be conducted by casual correspondence.*

In *Good Hope Ry. Co. v. Railway Barb &c. Co.*, 22 Fed. 635, the Court said (p. 637):

“Where a corporation is not engaged in business in this state there is no room for implying its consent to come here to litigate with a citizen of this state or of a foreign state. In this case the president of the defendant was here in his representative character, but the corporation had never been practically engaged in business here. It had made purchases here occasionally, but it could have made them by correspondence as well as by the presence of its agents here. If the purchases had been made by correspondence it could be as logically urged that the corporation was engaged in business here as it can be now. Instead of writing, its agent came here in person. As it has never kept an office here, or carried on any part of its business operations here, or been engaged in any business here, which required it to invoke the comity of the laws of the state, it was not ‘found’ here for the purpose of being sued. The motion to vacate the service of the process is granted.”

In *Frawley v. Penna. Casualty Co.*, 124 Fed. 259, the Court said (p. 263):

“These jurisdictional facts the state necessarily cannot control, and it cannot, therefore, declare or prescribe in advance what shall be taken as the doing of business within its borders, nor what shall constitute a sufficiently representative

agency. Both must be determined by the courts upon the facts as they arise, according to the principles of law which apply. We are not concerned, therefore, in the present instance, with what may be the law of Wisconsin, nor with the view in this regard taken by its courts. That state cannot extend its jurisdiction personally over non-resident parties, corporate or otherwise, which have never undertaken in fact to enter it. According to the statutes referred to above, the service of process on any person in Wisconsin who merely advertises himself as agent of a foreign insurance company, whether authorized to do so or not, is binding on the company—a position, which, if sustained, would put such corporations at the mercy of every arrant knave who saw fit to so declare that he represented them.

“The authority of the court of Eau Claire county to enter judgment against the defendant company as it did, depends, therefore, on the two questions: (1) Was the company at the time engaged in business in the state of Wisconsin? And (2) was Joyce such a representative of it that the service of process upon him must be held good? Both, as it seems to me, are to be answered in the negative. As to the first, the mere taking of the four accident policies which the company had at one time in the state can hardly be said to have been a transaction of business within it. These policies were all negotiated by correspondence with the company, and not through the medium of agents located in the state, or going into it for that purpose; and the business, whatever it was, was done at the home office, where the applications were received and passed upon, the payment of premiums made, and the policies written and forwarded.”

And see, *Boardman v. S. S. McClure Co.*, 123 Fed. 614.

(e). *It must be something more than the negotiations of loans or placing of securities.*

In *Gilchrist v. Helena &c. Ry. Co.*, 47 Fed. 593, it was held that the purchasing of the securities of a State railway corporation, and taking a mortgage on its property by a foreign corporation, was not a doing of business in the State so as to subject the latter company to service.

In *Honeyman v. Colorado Fuel & Iron Co.*, 133 Fed. 96, it was held that listing of stock on the New York Exchange and maintaining there a registration and transfer office, was not such a doing of business as would subject the company to process.

For other cases, see:

Clews v. Woodstock Iron Co., 44 Fed. 31;
Payson v. Withers, Fed. Cas. No. 10,864;
Cæsar v. Capell, 83 Fed. 403.

(f). *The keeping of a bank account in another State is not a doing of business in such State so as to make the corporation liable to service there.*

Thus in *Swann v. Mut. Reserve Fund Assn.*, 100 Fed. 922, the Court said (p. 929):

“Becoming a mere depositor in a bank is not doing business in Kentucky, within the meaning of our insurance laws.”

And see, *Honeyman v. Colorado &c. Co.*, 133 Fed. 96.

(g). *The mere residence of an officer or director for his own pleasure or convenience, does not carry with it the residence of the corporation so as to make the corporation liable to service at his residence.*

In *Conley v. Mathieson Alkali Works*, 190 U. S.

406, service was attempted on two resident directors of a foreign corporation. Meetings of directors had been held in New York, where the company's selling agency also had a branch office. The Court held that there was no valid service, saying (p. 411):

"The principle announced in *Goldey v. Morning News* covers the case at bar. The residence of an officer of a corporation does not necessarily give the corporation a domicile in the State. He must be there officially—there representing the corporation in its business. *St. Clair v. Cox*, 106 U. S. 350. In other words, a corporation must be doing business there, and, recognizing the necessity of this, the Circuit Court referred that issue to a master."

See, also, *Honeyman v. Colorado &c. Co.*, 133 Fed. 96.

(h). *The officer or other person served must have been sent into the State on the corporation's business, and not have been merely visiting or traveling there.*

In *St. Clair v. Cox*, 106 U. S. 350, the Court said (p. 357):

"We do not, however, understand the laws as authorizing the service of a copy of the writ, as a summons, upon an agent of a foreign corporation, unless the corporation be engaged in business in the State, and the agent be appointed to act there. We so construe the words 'agent of such corporation within this State.' They do not sanction the service upon an officer or agent of the corporation who resides in another State, and is only casually in the State, and not charged with any business of the corporation there."

And also (p. 355):

"Whilst the theoretical and legal view, that the domicile of a corporation is only in the State

where it is created, was admitted, it was perceived that when a foreign corporation sent its officers and agents into other States and opened offices, and carried on its business there, it was, in effect, as much represented by them there as in the State of its creation."

This Court in the above case clearly contemplated that the corporation to have consented to service through an officer in another State, must have sent the officer there to carry on its business in such State.

In *Caledonian Coal Co. v. Baker*, 196 U. S. 432, service on the president of railway company while passing through the State on a railway train, was held insufficient, although the corporation owned lands in the State and had brought suit to protect same (p. 444):

"We are of opinion that the service of summons upon Ripley, as president, while he was passing through the Territory on a railroad train was insufficient as a personal service on the company of which he was president. It is true that the company owned lands in the Territory, but its office, at which the meetings of its directors were held, was in the city of New York, while the office of its land commissioner was at Topeka, Kansas, and the office of its president was at Chicago, Illinois. The mere ownership of lands in New Mexico, or the bringing of suits there to protect its lands against trespasses, could not have had the effect to put the company into that Territory for the purposes of a personal action against it based on service of summons upon one of its officers while passing through the Territory on a railroad train. If by the laws of New Mexico a party having a cause of action against the company, based on the acts of 1887 and 1890, could have sued out an attachment and caused it to be levied upon its lands in the Territory in order to secure the satisfaction of any judgment he might finally obtain

in such action—upon which point we express no opinion—it would not follow that a personal judgment could have been rendered against the company. In such case the judgment of the court could not affect anything except the lands attached. No personal judgment could have been rendered against the company by reason merely of such attachment."

In *Earle v. Chesapeake & Ohio Ry. Co.*, 127 Fed. 235, the Court said (p. 236):

"The mere presence of some of its officers or agents does not justify the conclusion that they have brought the corporation with them. That invisible and intangible entity only exists in thought, and is regarded as present in a foreign jurisdiction only when its officers or other agents cross the line of that jurisdiction for the purpose of carrying on the corporate enterprise, and actually do carry it on within the foreign boundaries."

In *Swann v. Mutual Reserve &c. Assn.*, 100 Fed. 922, the Court said (p. 925):

"An officer of a corporation however high in grade, when casually away from the home of the corporation, does not carry with him out of the home jurisdiction of his company his official character, authority, or responsibilities, because it is not so intended by his principal. In short, under these circumstances, he does not represent his company, although he is its president, its highest officer, and its most powerful agent."

And see:

Goldey v. Morning News, 156 U. S. 518;
Fitzgerald &c. Co. v. Fitzgerald, 137 U. S. 98;
St. Louis Wire Mill Co. v. Hemphill, 32 Fed. 802;

Carpenter v. Westinghouse &c. Co., 32 Fed. 434;
 Case v. Smith &c. Co., 152 Fed. 730.

(i). *Even where an officer comes into the State and there negotiates some matter for the Company, it has been held that service is not valid, if the transaction was a casual one or an isolated matter which would have been taken up by correspondence in the ordinary course of business.*

This has been often and frequently held in the Federal Courts. Thus in *Louden Machinery Co. v. American &c. Co.*, (E. D. Pa.), 127 Fed. 1008, the president of a foreign corporation came into the State and tried to settle a dispute over a contract which had been made by mail. He was served with process. The Court held the service invalid, saying (p. 1009):

“I cannot believe that a foreign corporation, having a difference with an Iowa citizen concerning a contract not made in this state, surrenders itself to Iowa courts because an agent, with or without authority, comes to this state, seeking to adjust such difference. If such be the law, then compromises, so much favored by law, are largely at an end as to foreign corporations.”

For other like cases, see:

Wilkins v. Queen City &c. Co., 154 Fed. 173;
 Case v. Smith &c. Co., 152 Fed. 730;
 Good Hope Ry. Co. v. Ry. Barb &c. Co., 22 Fed. 635;
 U. S. Graphite Co. v. Pacific Graphite Co., 68 Fed. 442;
 Hoyt v. Ogden &c. Cement Co., 185 Fed. 889;
 Ladd Metals Co. v. Amer. Mining Co., 152 Fed. 1008;

Craig v. Welsh &c. Co., 165 Fed. 534;
Eirich v. Donnelly Contracting Co., 104 Fed. 1;
Noel Construction Co. v. Smith, 193 Fed. 492.

This last proposition was qualified, however, in certain other cases, holding that where a corporation sends an officer or agent into a State for the express purpose of there carrying on or settling a certain specific business of the corporation, such officer or agent may be served with process in a suit arising in connection with that very business. This was the ruling of the Court in *Houston v. Filler, &c. Co.*, 85 Fed. 757, and *Brush Creek, &c. Co. v. Morgan & Co.*, 136 Fed. 505. In *Noel Construction Co. v. Smith*, 193 Fed. 492, the cases pro and con on this question are considered at length.

(j). *And where the corporation has actually done considerable of its ordinary business in the State, an officer or agent coming into the State to transact or settle a particular piece of such business may be served with process in a suit arising out of that very piece of business.*

This was the rule laid down in a line of cases arising out of transactions by insurance companies in States other than those wherein they were chartered. In such cases it was held that where an insurance company issued policies and collected premiums in a State, other than that creating it, service could be made in such State upon an officer or agent sent into the State to settle a controversy arising on such a policy, in a suit originating out of such controversy.

Commercial Mut. &c. Co. v. Davis, 213 U. S.
245;
W. E. Life Ins. Co. v. Woodworth, 111 U. S.
138.

In St. Louis & S. W. Ry. Co. v. Alexander, 227 U. S. 218, the facts were that a Texas railway corporation had combined its operations with those of another railroad company, the two roads constituting a line of traffic known as the "Cotton Belt Route". A controversy arose over a shipment for delivery in New York, and service was made (under the broad provision of the New York Statute) upon a director of the company in New York. The facts are thus stated by the Supreme Court (p. 228):

"The testimony discloses that the two roads together constitute a continuous line from St. Louis, through the States of Illinois, Missouri, Tennessee, Arkansas and Louisiana into Texas, and are together known as the 'Cotton Belt Route'. This combination has an office in the city of New York, upon the door of which, as upon the stationery and literature of the companies, the symbol, 'Cotton Belt Route', is found in use. Underneath appears the general description, 'St. Louis Southwestern Lines', and there is also named a general eastern freight agent and traveling freight agent of the lines. With this joint freight agent at the office in New York the matter of the plaintiff's claim was taken up and considered, and correspondence concerning it was had through his office, and a settlement of the claim attempted. It was only after such negotiations for a settlement had failed that this action was brought. Here, then, was an authorized agent attending to this and presumably other matters of a kindred character, undertaking to act for and represent the company, negotiating for it and in its behalf declining to adjust the claim made against it. In this situation we think this was the transaction of business in behalf of the company by its authorized agent in such manner as to bring it within the District of New York, in which it was sued, and to make it subject to the service of

process there. See in this connection, *Pennsylvania Lumbermen's Mutual Fire Insurance Company v. Meyer*, 197 U. S. 415; *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245, 255.

"In our opinion the court did not err in holding the corporation subject to process and duly served in this case."

The rule laid down by this court, therefore, was no more than an affirmation of its previous rulings in the cases cited by it, holding that where a foreign insurance company placed policies and collected premiums within a State, service could be made there on an agent, sent into the State to effect a settlement upon a death or accident claim, in a suit arising out of such claim. The case was further controlled by the fact that the evidence clearly showed that the two railroads were in effect one system, and that their general business was carried on jointly in New York, at a joint office, by joint agents there. A similar state of facts was the basis for a like ruling in *Van Dresser v. Oregon Ry. & Nav. Co.*, 48 Fed. 202.

(k). *So, also, a foreign manufacturing corporation, which has made many sales and deliveries in a State, and is present there through an agent sent into the State in connection with the corporation's business, with power to receive moneys for sales or to adjust controversies arising out of sales, has been held servable with process through such agent in a suit arising out of such business.*

This was the holding of the Court in *Internat'l. Harvester v. Kentucky*, 234 U. S. 579, discussed pp. 24 and 34, supra.

The same rule was laid down in *Herndon-Carter Co. v. Norris*, 224 U. S. 496, and in *New Haven Pulp &c. Co. v. Downingtown &c. Co.*, 130 Fed. 600.

In *Board of Trade v. Hammond Elevator Co.*, 198 U. S. 424, the facts were that an Indiana corporation maintained a place of business in Indiana and leased the exclusive use of certain telegraph wires from that place to several cities in Illinois to the offices of certain persons there. The lease of these offices was signed by the corporation, and they were designated therein as "offices" of the corporation; they were also styled "offices" of the corporation in certain printed forms prepared by the corporation. Over these wires the corporation transmitted to these offices, and to persons there called "correspondents", New York Stock Exchange quotations, which the correspondents posted upon their blackboards. Customers at the "offices" gave orders, verbal or written, to buy or sell grain, which orders were transmitted to Indiana and accepted by return message over the wires. The "correspondents" gave memorandums showing the trade and price fixed to the customer, and gave daily statements and made remittances to customers through a local bank. Accounts were closed by wire to the Indiana office. The correspondent received as compensation a fixed commission charged as "wire service". Service made upon the "corporation" in Illinois was held valid, the Supreme Court saying, in reversing the Court below (p. 441):

"The real transaction in this case is undoubtedly artfully disguised, but notwithstanding the fact that the order is made and accepted at Hammond and the margin was charged up at Hammond against the correspondent, and the profits or losses made there, we are of the opinion that in receiving, transmitting and reporting orders to the customers, receiving their margins, and settling with them for the profits or losses incident to each transaction, the correspondent is

really 'doing business' as the agent of the elevator company in Illinois, and may be properly treated as its agent for the service of process. It is evident that if these correspondents be not regarded as agents in these transactions, it is possible for the defendant to establish similar correspondents in a dozen cities in at least a dozen States of the Union, and an enormous business be built up, in which the defendant company is the real principal, with no possibility of being sued except in the States of Indiana and Delaware.

"If these correspondents were admitted to be agents of the elevator company it is not perceived how their methods of doing business would be materially changed. They would maintain an office in their own cities; would receive and transmit to their principals offers for trades made to them and report their acceptance or refusal, as is frequently done with respect to policies by agents of insurance companies; would receive and deposit the margins and attend to the settlement of differences. In fact, their position is analogous to that of an ordinary insurance agent, with power to receive applications and premiums, deliver policies and settle losses, and whose acts are binding on the principal, notwithstanding a provision in the application for the policy declaring such party shall be the agent of the insured."

(l). The mere maintaining an office within the State does not establish a doing of business there so as to subject the corporation to service of process.

Since the doing of business within the State and not the presence of its officers or agents there, is the criterion, the Courts have often held that the fact that an office was maintained bearing the company's name and occupied by the corporation's agents or employees, did not subject the corporation to service of process

unless it was shown that the company's ordinary business was there carried on by the company's officers or employees sent there for the purpose.

Thus it has been held that an office maintained and used merely for the solicitation of business or for the advertising of business, was not an office where business of the corporation was done by its officers or agents, so as to subject the corporation to service upon such officers or agents at such office.

In *Green v. Chicago &c. Co.*, 205 U. S. 530, the facts in which case have been set forth in this brief, p. 25, *supra*, this Court said (p. 532) :

"For the purpose of conducting this incidental business the defendant employed Mr. Heller, hired an office for him in Philadelphia, designated him as district freight and passenger agent, and in many ways advertised to the public these facts. The business of the agent was to solicit and procure passengers and freight to be transported over the defendant's line. For conducting this business several clerks and various traveling passenger and freight agents were employed, who reported to the agent and acted under his direction.

* * * The question here is whether service upon the agent was sufficient, and one element of its sufficiency is whether the facts show that the defendant corporation was doing business within the district. It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers. * * * * The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute 'doing business' in the sense that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it."

In *Maxwell v. Atchison &c. Ry. Co.*, 34 Fed. 286, the Court, per Brown, J. (afterwards Mr. Justice Brown, of the United States Supreme Court), said (p. 288):

"If it have an office for the general transaction of its business,—the sale of its goods, if it be a manufacturing corporation; or the making of contracts, and the receipt of freight and passengers for transportation, if it be a railroad,—it would appear to be sufficient."

And again (p. 289), the Court said:

"Even if it be conceded that jurisdiction might be maintained, irrespective of the state statute, wherever service could be made upon an authorized agent of the corporation, it does not seem to me that the business which the defendant carried on in this state was of such a character as to make it amenable to suits within this jurisdiction. Gillman was not an officer and managing agent, or even a ticket agent of the company. He had no independent office or place of business, but simply occupied a desk in a coal office. His authority was limited to soliciting business,—to turning, as far as he could, the tide of western travel over the defendant road. In fact, he was a mere runner. From the folders of the company it appears that it has agents of this description in at least a dozen different states. If it can be sued in this state for a cause of action arising in Kansas, it is equally amenable to suit in any one of these states in which it may happen to have a passenger agent for soliciting business. It would, in my opinion, be an unwarranted extension of the law of constructive presence to hold the road liable to suit in all these different states as a corporation inhabitant or found therein. The same principle would make every manufacturing or trading corporation liable to suit in any state in which it sent a commercial agent or 'drummer' to solicit patronage."

And see:

Case v. Smith, 152 Fed. 730;
 N. K. Fairbank Co. v. Cincinnati, 54 Fed. 420;
 Goepfert v. Compagnie &c., 156 Fed. 196;
 McGuire v. Great Northern Ry. Co., 155 Fed.
 230;
 Union Ass'd. Press v. Times &c. Co., 84 Fed.
 419.

So, also, where an office is maintained only for the registration or transfer of its securities and incidental matters in connection therewith, it has been held that such matters did not constitute a doing of business at the office, so as to subject the corporation to service there.

In *Honeyman v. Colorado &c. Co.*, 133 Fed. 96, a foreign corporation had a registration and transfer office in New York. It kept a bank account in New York, and directors' meetings were sometimes held there at the office of a resident director. It also appeared that certain funding transactions had been carried on in New York. Service was set aside.

In the above case the Court quoted with approval the case of *People v. Horn Silver Mining Co.*, 105 N. Y. 76, where the Court said:

"We cannot construe the words 'doing business in this state' to mean the whole business of the corporation within this state; and while we are not prepared to hold that an occasional business transaction—that keeping an office where meetings of the directors are held, transfer books kept, dividends declared and paid, and other business merely incidental to the regular business of the corporation is done—would bring a corporation within this act, yet when, as in this case, all these things are done, and in addition thereto a substantial part of the regular business of the corporation

is carried on here, then we are unable to say that the corporation is not brought within the act, as one 'doing business in this state'."

And see, *Clews v. Woodstock Iron Co.*, 44 Fed. 31, where the Court held that the listing of stock was not doing business within a State, but refused to pass upon the effect of maintaining a transfer office afterward.

See, also, *Galena M. & S. Co. v. Frazier*, 20 Pa. Super. Ct. 394, where the Court held (p. 398) that business merely incidental to the financing of a corporation carried on at an office maintained for that purpose, was not such doing of business as would subject to service of process.

(m). *The fact that stationery is printed, or the corporation's name is placed on the door for a resident agent's convenience, is not a determining factor, the real question being whether the office is maintained for the actual doing of the business of the corporation.*

In *Doe v. Springfield &c. Co.*, 104 Fed. 684, an agent occupied in soliciting only, had printed his own name and office address upon the usual stationery of the company. The court held that service on such agent was invalid.

In *N. K. Fairbank Co. v. Cincinnati*, 54 Fed. 420, an office maintained by the foreign corporation, for a soliciting agent, had the company's name painted on the door. Service attempted on the agent at such office was held invalid.

In *Board of Trade v. Hammond Elevator Co.*, 198 U. S. 424, the evidence showed that the foreign corporation leased certain offices in the State, stating both in the lease and in certain printed literature that these offices were "offices" of the corporation. The Circuit Court of Appeals for the Chicago district, however,

(125 Fed. 463) held that there was no valid service, and this Court, in reversing, placed its decision not upon the fact that an office was maintained, but upon the fact that the corporation was actually "doing business" in the State.

It will be observed that in every case where service has been held valid upon officers or agents of a corporation outside of the State in which the corporation is chartered, it has been on the ground that the corporation had been doing a substantial part of its corporate business in the State where service is made, by or through an officer or agent maintained or sent to such State for the purpose of transacting such business there.

This is the logical rule deduced from the purpose for which corporations have been held servable in States where they have no corporate existence, to wit, that they may and do consent to be found there for the purpose of doing their corporate business. The rule has not been extended to cover cases where a corporation's officers or agents have been resident permanently or temporarily in other States, or where a corporation has owned property or rented or acquired offices there, so long as the corporation is not shown to have actually been doing the business for which it was chartered in such other States, through its officers or agents there, either in such offices, or at other offices or places, with reference to the very corporate business out of which the suit in question arose.

It is clear, therefore, that the residence of the officers is a negligible matter, if they were not sent into the State for the express purpose and with the actual result of doing corporate business; that the renting of the office is a negligible matter, unless the actual business of the corporation was done there; and that

the doing of business by a corporation, so as to subject it to service must be the doing of some substantial part of the ordinary business for which the corporation was chartered, and not the doing of mere incidental or casual administrative details for the convenience of officers resident there, or the doing of mere solicitation, advertising or financing matters or things, of a purely administrative character, and being no part of the actual business for which the corporation was chartered.

II. THE RECORD SHOWS THAT THE DEFENDANT COMPANY WAS A FOREIGN CORPORATION, AND SINCE IT WAS ESSENTIAL TO THE COURT'S JURISDICTION THAT IT SHOULD BE SHOWN THAT THE DEFENDANT COMPANY WAS DOING ITS CORPORATE BUSINESS IN THE EASTERN DISTRICT OF PENNSYLVANIA, AND THAT PROCESS WAS SERVED THEREIN ON AN AGENT OF THE COMPANY AUTHORIZED TO TRANSACT SUCH BUSINESS, AND THE PLAINTIFF HAVING FAILED TO FURNISH SUCH PROOF, THE COURT BELOW SHOULD HAVE VACATED THE PROCESS.

1. The pleadings and return of the Marshal did not show sufficient facts upon which to maintain even *prima facie* the Court's jurisdiction.

The Record shows that the defendant company is not a corporation of Pennsylvania, but is chartered and existed under the laws of the State of Virginia. The Marshal's return does not show that the defendant company was doing business in the State of Pennsylvania, but recites that the process was served upon the defendant company "at its office #1307 Real Estate

Trust Building, Broad & Chestnut St., City of Philadelphia, by handing a true and attested copy thereof to Frederick H. Treat, President of said Company, and making known the contents of the same to him"; but the fact that the Company had an office in Philadelphia is not sufficient to show that it was doing business in Pennsylvania.

Green vs. Chicago, &c. Ry. Co., 205 U. S. 530.

And the fact that process was served upon the President of the Company in Philadelphia is not sufficient, unless it be shown that the President by authorization of the Company was conducting its business in Pennsylvania.

In *St. Clair vs. Cox*, 106 U. S. 350, this Court said, through Mr. Justice Field (at page 357) :

"We do not, however, understand the laws as authorizing the service of a copy of the writ as a summons upon an agent of a foreign corporation, unless the corporation be engaged in business in the state and the agent be appointed to act there."

In the case of *Earle vs. Chesapeake & Ohio Ry. Co.*, 127 Fed. 235 (which case was cited with approval by this Court in the case of *Green vs. C. B. & Q. Ry. Co.*, 205 U. S. 530, at page 534), Judge McPherson reviews the law on this subject, as follows (at page 236) :

"Nowhere upon the record is there any averment that the defendant is doing business in the state of Pennsylvania, and, in view of this fact, the absence of such an averment from the marshal's return is said to constitute a fatal defect therein. In my opinion, this proposition is sound. In the statement of claim, which was filed when the summons was issued, the defendant is described as a railway corporation of the state of Virginia.

Prima facie, therefore, its business of transportation is conducted there; and although, no doubt, it may do part of its business in this state, there is certainly no presumption that this is true. * * *

* * * * * Therefore the present record should show somewhere that the defendant is doing business in this commonwealth, and, as the fact is nowhere else averred—neither in the praecipe for the summons, nor in the summons itself, nor in the statement of claim—the marshal's return should have supplied the essential fact. In *St. Clair v. Cox*, 106 U. S. 350, 1 Sup. Ct. 354, 27 L. Ed. 222, the Supreme Court thus stated the rule that I have just applied (page 359, 106 U. S. page 362, 1 Sup. Ct. 27 L. Ed. 222):

* * * * * We are of opinion that, when service is made within the State upon an agent of a foreign corporation, it is essential, in order to support the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record—either in the application for the writ, or accompanying its service, or in the pleadings, or the finding of the court—that the corporation was engaged in business in the state. The transaction of business by the corporation in the state, general or special, appearing, a certificate of service by the proper officer on a person who is its agent there would, in our opinion, be sufficient *prima facie* evidence that the agent represented the company in the business. It would then be open, when the record is offered as evidence in another state, to show that the agent stood in no representative character to the company, that his duties were limited to those of a subordinate employee or to a particular transaction, or that his agency had ceased when the matter in suit arose.'

"Judge Dallas has recently set aside a similar return in this district for the same reason. *Scott v. Oil Co.*, 122 Fed. 835. And the point was decided within a few months by the Circuit Court of

Appeals for the Seventh Circuit in Central Grain & Stock Exchange v. Board of Trade, 125 Fed. 463.

"This conclusion is in no way affected by the fact that the Pennsylvania Act of 1901 (P. L. 614), under whose second section the service in this case was made, authorizes the service of the writ of summons upon any corporation, domestic or foreign, 'by handing a true and attested copy thereof to the president, secretary, treasurer, cashier, chief clerk or other executive officer personally.' This act only deals with the manner of service. Park v. Oil City Boiler Works, 204 Pa. 453, 54 Atl. 334, where the Supreme Court of Pennsylvania declared that this statute had made no change in the common-law rule concerning suits against corporations, and no change in the jurisdiction of the courts or the liability of corporations to be sued. Section 2 necessarily presupposes that the corporation is already within the State, and is therefore capable of being reached by a writ. Assuming the Assistant Secretary of the defendant to be an 'executive officer', and not merely a subordinate upon whom service would not be sufficient, it is clear that his mere presence, either as a visitor or as a resident, in this district, is immaterial. The vital question is, was the corporation doing business in the State of Pennsylvania? If it was not, the fact that the assistant secretary chose to live here could not confer jurisdiction upon any court; and in the federal courts, as I have already said, every jurisdictional fact must appear upon the record. Upon the subject of service of process upon a foreign corporation, see the note to Eldred v. American Palace Car Co., 45 C. C. A. 3, which contains an extensive collection of the cases upon this subject."

In the present case, the Record fails to show that defendant is "doing business" in Pennsylvania. The return that service was made on the defendant "at its

office" does not carry with it any intendment of the doing of business by the Company in Pennsylvania, so as to make it subject to the service of process, nor does the fact that the process was handed to the President of the Company, in his office, in Philadelphia show that he was authorized to represent the defendant Company in doing business in the State of Pennsylvania. Undoubtedly a railroad company may rent an office in another state from that in which it is chartered, and may maintain there salaried agents and employes, without thereby subjecting itself to process of the Federal Court in such State in a personal action.

Green vs. C. B. & Q. Ry. Co., 205 U. S. 530.

It is evident, therefore, that upon the face of the pleadings and the return of the Marshal, sufficient evidence did not appear to give to the District Court for the Eastern District of Pennsylvania, jurisdiction in a personal action of this character against the defendant.

2. The depositions and exhibits do not establish that the defendant, a foreign corporation, was doing business in Pennsylvania and that Frederick H. Treat was authorized to conduct its business in that State.

The depositions and exhibits in the Record in this case show very clearly that the defendant, a Virginia corporation having an office and agent in Virginia upon whom process may be served, and a general office in Washington where its business was transacted and its Directors' meetings were customarily held, was operating lines of railroad entirely in the State of Virginia and the District of Columbia, and that all of its actual

business as a carrier was done in Virginia and the District of Columbia.

The validity, therefore, of the service in Pennsylvania as against the Company must rest, (if justified by the Record), upon the fact that the President of the Company, who is a resident of Pennsylvania, had desk room in the office of a third person, at 1307 Real Estate Trust Building, Philadelphia, where he transacted his business in connection with a number of corporations; that the Vice-President and Treasurer of the Company also resided in Philadelphia; that deposits were kept in certain Philadelphia banks; that a Philadelphia Trust Company was registrar of the Company's bonds; that stationary printed and used by the President in Philadelphia, bore the name of the Company and was returnable to the office where the President had his desk; that the Company's general register, sundry ledger, bank ledger, stock ledger, stock transfer book, stock certificate book and seal were in the custody of the Company's officers who resided in Philadelphia; that a private City Directory had listed the Company at the office of the President in Philadelphia. No evidence, however, was introduced of any business transacted in Philadelphia with any citizen of Pennsylvania or of any other State, but the books above mentioned were kept in Philadelphia "for the convenience of the President and the Treasurer" (Record, p. 33); and ninety-nine per cent. of the correspondence conducted in the office was with other officers of the Company located at the office at Washington, in the District of Columbia, and referred to the operation of the Company.

The Court below based its ruling upon the fact (Record, p. 139), that the corporation "was maintaining an office for the conduct of a large part of its executive, administrative and financial business in this

district, at which were the offices of its president and treasurer as such", and that, therefore, "sufficient has been shown to establish the fact that the defendant maintained an office in this district at which, through its president, treasurer and bookkeeper, it carried on an important and essential part of its business in its corporate capacity".

The Court, however, has disregarded the facts as to the purpose of the corporation in establishing the office, and the use to which the office was put. As has been shown, the mere maintaining of an office is immaterial, unless it was designed and used for the purpose of carrying on the business of the corporation within the State where it is located. It is admitted that desk room was rented in an office of a third person, but it was not rented for the purpose of doing corporate business in Pennsylvania. It was primarily rented and used for two things: (a) For use as a transfer office for registration, etc., of the Company's stocks on the Philadelphia Stock Exchange; (b) for the convenience of the Company's officers, already resident in Pennsylvania, in carrying on their correspondence with the home office, relating to the administrative affairs of the Company. As to the first of these, it has been often held, as noted *supra*, that a transfer office is not an office where corporate business is transacted. As to the second, it will be noted that these officers were not sent into Pennsylvania to do the Company's corporate business, or any part of such business. They were—like many corporate officials—residents of another State from that in which their corporation was chartered, and it was not necessary that they should go backward and forward every time a letter needed to be answered or an entry made in the ordinary routine. Such a requirement would have made their Pennsylvania resi-

dence impracticable. On the other hand, it was reasonable and proper that they should have a place to which their correspondence could be addressed and where their papers could be kept at some point readily available and in the center of the City. And the mere permissive occupancy of such convenient room, the use of desks there, the keeping of papers, mailing and receipt of letters, an occasional conversation with persons casually in the City, could not constitute an office of the corporation for the doing of its corporate business. The surroundings indicated no intent to establish an office. The name of the corporation was not on the doors or windows; there was no listing in the telephone books; there was no furniture owned; the officers were obliged to accept such accommodations as they were offered, and were obliged to move their office-room at the will of the owner of the office. The actual situation amounted to no more than this:—that officers of the corporation obtained space for a transfer office, to comply with the regulations of the local Stock Exchange, and that certain of its resident officers used the space in question for their own convenience in keeping the books in their custody and receiving and answering such business mail as they received. The facts are in no way as strong as those cases in which the maintaining and using of large advertising and soliciting offices, with a force of local agents, has been held not a sufficient doing of business to subject corporations to service.

In the case of *Green vs. Chicago, &c. Ry. Co.*, 205 U. S. 530, this Court said, through Mr. Justice Moody (at page 532):

“The jurisdiction of the Circuit Court in this case was founded solely upon the fact that the parties were citizens of different States. In such

a case the suit may be brought in the district of the residence of either. Act of March 3, 1875, chap. 137, Sec. 1, as corrected by act of August 13, 1888, chap. 866, Sec. 1 (25 Stat. 434). But to obtain jurisdiction there must be service, and the service was upon the corporation in the Eastern District of Pennsylvania. Its validity depends upon whether the corporation was doing business in that district in such a manner and to such an extent as to warrant the inference that through its agents it was present there.

"The eastern point of the defendant's line of railroad was at Chicago, whence its tracks extended westward. The business for which it was incorporated was the carriage of freight and passengers, and the construction, maintenance and operation of a railroad for that purpose. As incidental and collateral to that business it was proper, and, according to the business methods generally pursued, probably essential, that freight and passenger traffic should be solicited in other parts of the country than those through which the defendant's tracks ran. For the purpose of conducting this incidental business the defendant employed Mr. Heller, hired an office for him in Philadelphia, designated him as district freight and passenger agent, and in many ways advertised to the public these facts. The business of the agent was to solicit and procure passengers and freight to be transported over the defendant's line. For conducting this business several clerks and various traveling passenger and freight agents were employed, who reported to the agent and acted under his direction. He sold no tickets and received no payments for transportation of freight. When a prospective passenger desired a ticket, and applied to the agent for one, the agent took the applicant's money and procured from one of the railroads running west from Philadelphia a ticket for Chicago and a prepaid order, which gave to the applicant, upon his arrival at Chicago, the right

to receive from the Chicago, Burlington and Quincy Railroad a ticket over that road. Occasionally he sold to railroad employes, who already had tickets over intermediate lines, orders for reduced rates over the defendant's lines. In some cases, for the convenience of shippers who had received bills of lading from the initial line for goods routed over the defendant's lines, he gave in exchange therefor bills of lading over the defendant's line. In these bills of lading it was recited that they should not be in force until the freight had been actually received by the defendant.

"The question here is whether service upon the agent was sufficient, and one element of its sufficiency is whether the facts show that the defendant corporation was doing business within the district. It is obvious that the defendant was doing there a considerable business of a certain kind, although there was no carriage of freight or passengers. In support of his contention that the defendant was doing business within the district in such a sense that it was liable to service there, the plaintiff cites *Denver, &c. Railroad Co. v. Roller*, 100 Fed. Rep. 738, and *Tuchband v. Chicago, &c. Railroad*, 115 N. Y. 437. The facts in those cases were similar to those in the present case. But in both cases the action was brought in the state courts, and the question was of the interpretation of a state statute and the jurisdiction of the state courts.

"The business shown in this case was in substance nothing more than that of solicitation. Without undertaking to formulate any general rule defining what transactions will constitute 'doing business' in the sense that liability to service is incurred, we think that this is not enough to bring the defendant within the district so that process can be served upon it. This view accords with several decisions in the lower Federal courts. *Maxwell v. Atchison, &c. Railroad*, 34 Fed. Rep. 286; *Fairbank & Co. v. Cincinnati, &c.*

Railroad, 54 Fed. Rep. 420; *Union Associated Press v. Times Star Co.*, 84 Fed. Rep. 419; *Earle v. Chesapeake, &c. Railroad*, 127 Fed. Rep. 235."

This case would seem to control the question here presented.

It would seem, therefore, that the mere fact that the Company had an office in Philadelphia where records were kept for the convenience of the officers of the Company who resided in Philadelphia, and where, so far as the Record shows, no citizen of Pennsylvania or any other State ever went to transact business with the defendant Company, was entirely insufficient upon which to base the jurisdiction of the Court.

In the case of *McCoach vs. Minehill Ry. Co.*, 228 U. S. 205, it appeared that the Minehill Railway Company had leased its railroad to another company, which operated it, but that the company maintained its corporate existence, collected the rentals from the lessee, distributed the same to its stockholders, kept bank deposits and received interest thereon; that it paid the ordinary and necessary expenses of maintaining an office and keeping up its corporate existence, including the payment of salaries to its officers and clerks; that it kept and maintained at its offices, stock books for the transfer of its capital stock, which was bought and sold upon the market; and it was held that this company was not "engaged in business so as to render it liable under the corporation tax act of 1909".

Every fact, so far as the residence of its officers and maintaining an office with the records and books therein kept, that appears in the record in this case, was equally applicable to the situation of the Minehill Railway Company, and yet this Court held that that Company was not "engaged in business".

3. The facts brought out by the depositions and exhibits filed in connection with the rule to vacate service, affirmatively show that the defendant company was not doing business in Pennsylvania so as to render it subject to service of process in this case.

The facts shown by the depositions in the Record, and relied upon by the plaintiff to sustain the jurisdiction of the Court, may be briefly reviewed as follows:

(a). *The residence in Pennsylvania of the President, Vice-President and Treasurer of the Defendant Company.*

It is well settled that the residence of officers of a company within a state, does not give to that state jurisdiction of the corporation, unless the residence is for the purposes of the corporation followed by doing business for the corporation. The corporation has an actual undisputed residence in the state where it is chartered, and if another residence is to be acquired, it must be by the action of the corporation itself, by doing the business for which it was incorporated by its duly authorized agents, beyond the limits of its home state, but the residence of an officer, which he selects for his own personal convenience, and not necessarily with regard to the business or interests of his corporation, cannot carry with it the subjection of his corporation to process in the state of his residence.

(b). *Maintenance of an office in Pennsylvania.*

From the fact that the Company maintained an office in Philadelphia, at which the officers residing in Pennsylvania for their own convenience kept accounts showing the conduct of the business of the Company in

Virginia and Washington, and the fact that at such office was maintained the stock transfer book of the Company, it cannot be held that the Company was doing the business for which it was chartered in the City of Philadelphia.

Green vs. C. B. & Q. Ry. Co., 205 U. S. 530.

The evidence does not show that any of the business for which the Company was chartered was carried on in Pennsylvania or through the Philadelphia office. Certain officials resided in or near Philadelphia, and for their convenience desk room was obtained in an office in Philadelphia, where account books and stock books were kept by these officers, in whose custody they properly belonged. The only "business" done at this office (besides the transfer of stock) was correspondence with the general office at Washington, with reference to information forwarded from such office, and the forwarding of checks and vouchers approved by the resident officers, and rarely a conversation or communication with a stockholder or some other person who desired to see the President while he was in the City, although the greater part of his time was spent in Washington. No instance appears in the evidence of any business having been transacted in Philadelphia with any person, other than the intercommunication by correspondence between the officers resident in Philadelphia and the officers operating the railroad property in Washington and Virginia.

The facts shown by the Record are that the President and Treasurer, by an arrangement with one of the tenants of the Real Estate Trust Building, in Philadelphia, who was a Director of the Washington-Virginia Railway Company, had desk room in such tenant's office, for which from month to month they paid \$50.00. The Company owned no furniture, had no telephone,

and did not have its name upon the door. The President of the Company had a desk in this office, and went there for a few hours every morning to get his mail and transact any business which might need his personal attention. He was connected with a number of companies, and looked after necessary correspondence in all of them. Occasionally he received visitors there. The Company had no lease of this office, and its occupancy was permissive only and terminable at any time; and it is submitted that these facts affirmatively show that the Washington-Virginia Railway Company did not maintain an office for its corporate business in the City of Philadelphia.

(c). The *Washington, Alexandria & Mt. Vernon Railway Company*, prior to its merger with the defendant company on the 21st of September, 1910, filed an application on December 26, 1906 (Record, p. 110), to list its securities on the Washington Stock Exchange, and in the application states: "The principal office of the company is located at Mt. Vernon, Virginia, with branch offices in Washington and Philadelphia." This information, however, was as to a company other than defendant and was prior to the incorporation of the Washington-Virginia Railway Company, defendant, and certainly has no bearing upon the question involved.

Even if the Washington-Virginia Railroad Company had appointed an agent for the conduct of its business in Pennsylvania, and had revoked this agency prior to the time of the service of process, this could have had no bearing upon the question here involved. In the case of *International Harvester Co. vs. Kentucky*, 234 U. S. 579 (at page 585), this Court said:

"We place no stress upon the fact that the Harvester Company had previously been engaged

in doing business in Kentucky and had withdrawn from that State for reasons of its own. Its motives cannot affect the legal questions here involved. In order to hold it responsible, under the process of the State Court, it must appear that it was carrying on business within the State at the time of the attempted service."

The fact, therefore, that the Washington, Alexandria & Mt. Vernon Railway Company may have stated in 1906 that it had a branch office in Philadelphia, can have no bearing upon the validity of the service of process in Pennsylvania on the Washington-Virginia Railway Company, which was an entirely different Company and was incorporated in 1910.

(d). *The Washington-Virginia Railway Company*, on May 2, 1911, made application to the Philadelphia Stock Exchange, to there list its securities, and in the application stated: "Stock is transferred at the Company's general office, 1307 Real Estate Trust Building, Philadelphia, and registered by the Girard Trust Company, Philadelphia, Registrar." (Record, p. 66.) And further stated as to the Company: "Offices: Principal, Mt. Vernon, Virginia; General and Transfer, 1307 Real Estate Trust Building, Philadelphia, Washington, 1202 Pennsylvania Ave."

From this fact, no inference can be drawn that the Company was transacting business, for which it was incorporated, within the State of Pennsylvania. It may be said that every railroad company, of any consequence, has its securities listed on the New York Stock Exchange, with a registrar of the securities in the City of New York, and an office of the Company there, where its transfer books are kept, and yet it would hardly be held that this fact would justify a personal action against any of such railroads in the City of New York.

The business of transferring stocks and registering the securities of a company are merely incidental transactions to the general business of the company, under its charter, and certainly are not as important on the question of determining whether the company is doing business within the State, as the maintenance of an office with a paid agent for the solicitation of freight and passenger traffic:

Green vs. C. B. & Q. Ry. Co., 205 U. S. 530.

(e). *The President of the Company, Mr. Frederick H. Treat, for his personal use had certain printed letter-heads which he used in correspondence. These bore the name of the Company, followed by the words, "Office of the President", or "Office of F. H. Treat, President", and the address of the office in the Real Estate Trust Building where the President had his desk. Other letter-heads in use at the office in Philadelphia by the President and other officers, bore the name of the Company and the address of the Washington office, with a list of the officers and directors. It could hardly be held that the use of such letter-heads indicated that the Company was transacting its business through an authorized officer in the City of Philadelphia. The President might have made such mail returnable at his private residence or at any other place, and such action on his part would not establish an office for the corporation where its business was transacted, without the express authority of the corporation.*

(f). *It appeared that the name of the Washington-Virginia Railway Company was printed in a Philadelphia Business Directory. It did not appear, however, by what authority the Company was so listed, and it apparently was put there by an enterprising employe of the Company making up the directory, without au-*

thorization by the Washington-Virginia Railway Company, and this fact seems unimportant in determining whether the Company was actually engaged in business in Philadelphia.

(g). *It appears that certain books were kept in the office in Philadelphia, as stated by the President (Record, p. 33), "for the convenience of the President and the Treasurer", who lived in Philadelphia.* These books were the general register and the sundry ledger (composed of totals taken from the working books of the Company, and intended as a companion and key to the register), the stock transfer book, stock certificate book, bank ledger and stock ledger.

All the information upon which these books were posted and kept was received from the general office of the Company at Washington, where were kept all the working accounts and operating data. The presence of the books in Philadelphia was not to enable the Company to do business in Pennsylvania, but was for the convenience of the resident officers (the President and Treasurer), who were obliged to sign checks, etc., and therefore needed at hand a general record of the Company's condition and business, and to facilitate the transfer of stock (which was listed in Philadelphia as well as in Washington), and the payment of interest and dividends which were paid from the surplus deposits of the Company in Philadelphia banks.

The keeping of such books, &c., did not show that the Company was even engaged in business.

McCoach vs. Minehill Co., 228 U. S. 205.

It is submitted that the fact that certain reference books of the corporation not used in the actual operation of the Company's business, but intended for reference to facilitate the payment of interest and divi-

dends and changes of stock ownership, and kept by the officers of the Company outside of the home State and at their residence, in order that they might conveniently keep track of the business conducted by the Company in Virginia and Washington, is no ground for holding that the corporation was conducting its business in the State of Pennsylvania.

These books were kept in Philadelphia at the residence of the Treasurer, as required by the By-Laws of the corporation, and were not kept there for the purpose of doing business in Pennsylvania, but because the Company required that these books should be at the same place with the Treasurer, in order that he might properly keep track of the Company's operations and of its accounts. If, as the authorities hold, the residence of an officer of a company in a State is not justification for the service of process upon the corporation in that State, it would hardly seem reasonable that the fact that the officer may have books with him at his place of residence, informing him of the operations of the company in another jurisdiction, would justify the service of process upon the Company in the foreign jurisdiction.

(h). *The By-Laws of the Company required that the President, "shall have the custody of the seal of the company", and therefore the seal was kept by the President, Frederick H. Treat, at the office in Philadelphia, and was taken to Washington as occasion arose. It would hardly seem that the fact that the seal was kept by the President in accordance with the By-Laws, at his residence, would indicate that the Company was doing business in the State of Pennsylvania.*

(i). *The Washington-Virginia Railway Company had deposits of money in several Philadelphia banks.*

The working deposit for the payment of expenses of operation, was kept in banks in Washington and Virginia, and a petty cash account was kept in Washington. The Philadelphia deposits were almost entirely used for the purpose of paying interest on bonds and dividends. It can hardly be held that the deposit of money by a foreign corporation in a bank in Pennsylvania for security, would indicate a purpose on the part of the corporation of doing the business, which it was authorized to do under its charter, in the State of Pennsylvania. If this be true, the residence of any corporation for the purposes of personal actions against it is extended to any State where it has money or investments.

(j). *Transfers were made at Philadelphia, where the stock transfer book was kept and where the stock was listed on the Stock Exchange, and where also the President and the Treasurer resided.* Certainly this was a mere transaction of incidental business, no more indicative of doing business within the State of Pennsylvania than maintaining an office for the sale of tickets and the soliciting of freight and passenger traffic, referred to in the case of *Green vs. Chicago &c. Ry. Co.*, 205 U. S. 530.

Taking all of the evidence together in this case, it is evident that the business of the Washington-Virginia Railway Company, the operation of a railway, was conducted in the City of Washington and in the State of Virginia; that the officers of the Company, the President, Vice-President and Treasurer, resided in Philadelphia, and there kept such records and papers as would enable them to intelligently direct the business of the Company transacted in the City of Washington and the State of Virginia. No business was transacted with citizens of Pennsylvania, so far as this Record

shows, and the maintenance of a stock transfer book and of a registrar in Philadelphia, was merely incidental to the business of the Company, and for the convenience of those dealing in the securities upon the Stock Exchange, and we submit that the evidence in this case was entirely insufficient upon which to hold that the defendant, the Washington-Virginia Railway Company, was doing business in the State of Pennsylvania.

As was said by the Court in the case of *People vs. Horn Silver Mining Co.*, 105 N. Y., 76 (at page 83):

“We are not prepared to hold that an occasional business transaction, that keeping an office where meetings of the directors are held, transfer books kept, dividends declared and paid, and other business merely incidental to the regular business of the corporation is done would bring a corporation within this act”,

referring to the act which authorized the service of process upon an agent of a corporation doing the business of his company within the State.

III. We therefore submit that the judgment in the District Court should be reversed, and the process quashed.

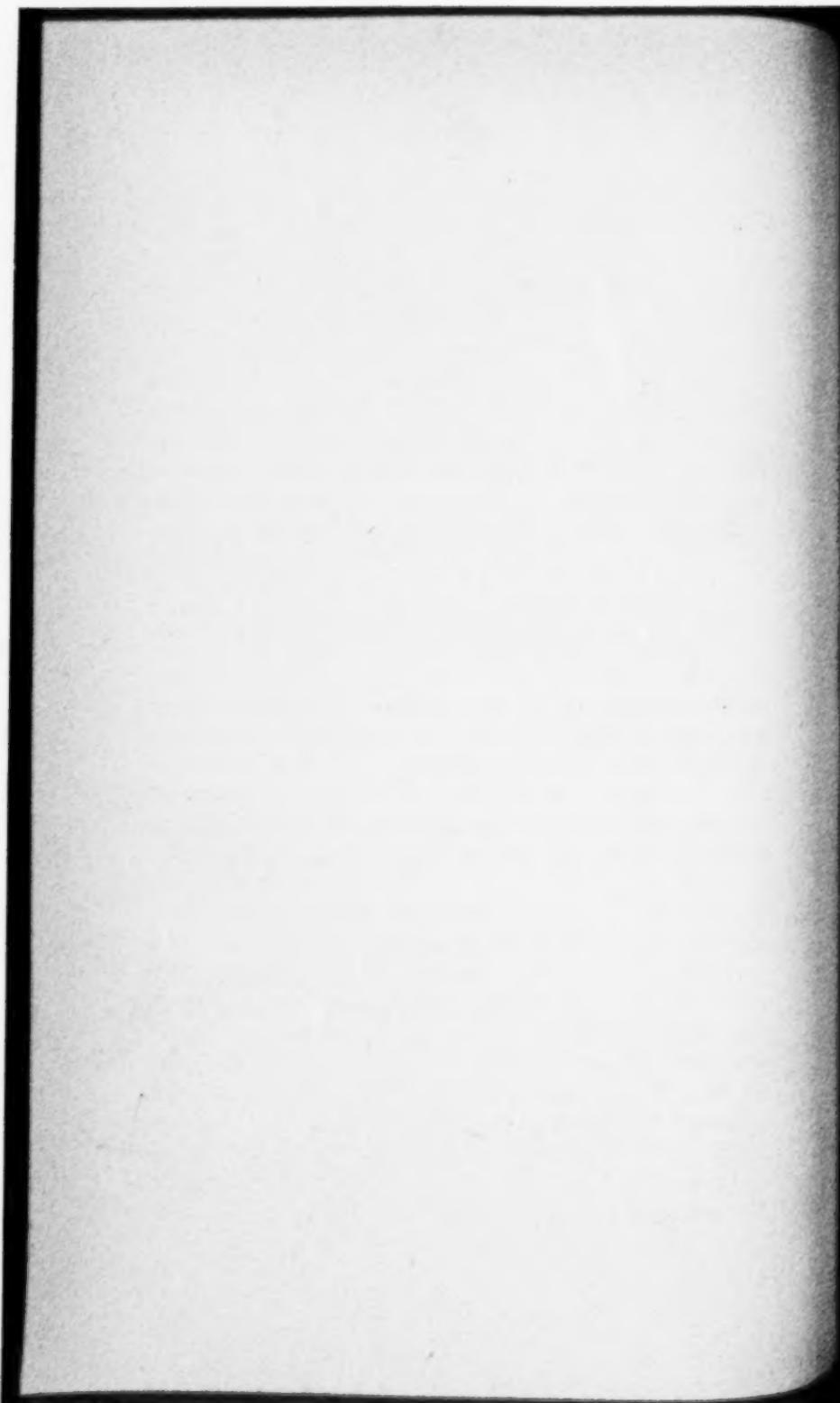
JOHN S. BARBOUR,

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Counsel for Plaintiff-in-Error.

February 15th, 1915.



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No. 212.

October Term, 1914.

IN THE

SUPREME COURT OF THE UNITED STATES.

WASHINGTON-VIRGINIA RAILWAY COMPANY,

Plaintiff-in-Error,

vs.

REAL ESTATE TRUST COMPANY OF PHILADELPHIA,

Defendant-in-Error.

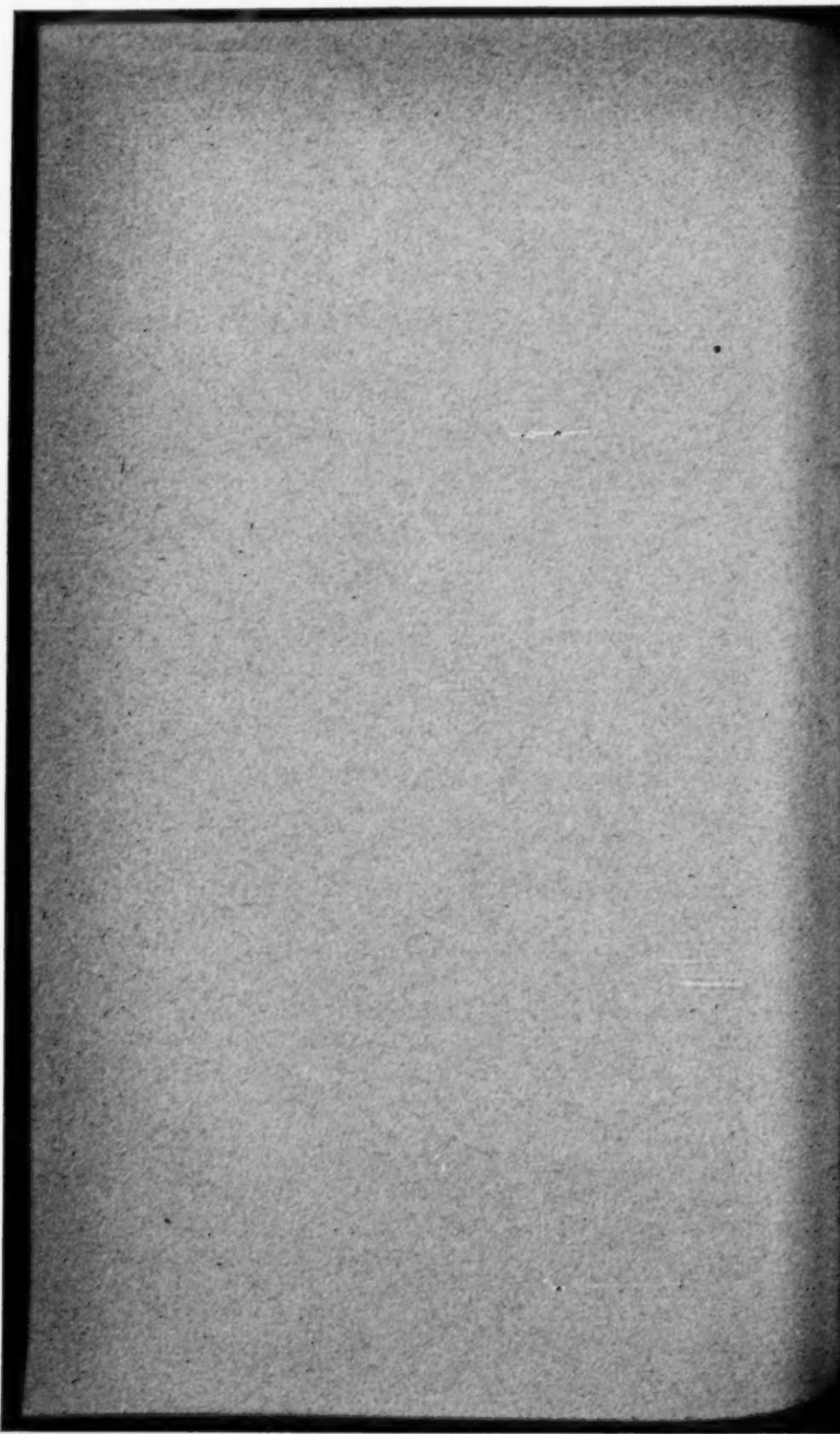
Reply Brief for Plaintiff-in-Error.

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Counsel for Plaintiff-in-Error.



IN THE
Supreme Court of the United States.

No. 212. Oct. Term, 1914.

WASHINGTON-VIRGINIA RY. CO.,
Plaintiff-in-Error,
vs.

REAL ESTATE TRUST CO. OF PHILA.,
Defendant-in-Error.

REPLY BRIEF FOR PLAINTIFF-IN-ERROR.

The plaintiff-in-error, in its brief heretofore filed in this case, endeavored to lay before the court fully and fairly the facts surrounding the case and the various decisions of this court and the lower federal courts' bearing upon these facts. In doing this, a full review of authorities was given, including practically all the cases bearing upon what we conceive to be an important legal question and one of great moment to the plaintiff-in-error in the present proceeding. In doing this the plaintiff-in-error did not select particular cases or base its argument upon occasional adjudications, but, at the risk of wearying the court has

laid before it everything pertinent to the subject coming to the knowledge of counsel.

Under these circumstances, we regret that it is necessary to file a further brief in the case. There are however, certain statements and matters contained in the brief lately filed by the defendant-in-error which, in our judgment, require answer or explanation.

(1) The statements contained in defendant-in-error's brief, wherein it is represented that the equities in the case have already been determined and that the case is *res adjudicata* on the merits are incorrect and misleading.

The defendant-in-error asserts that no defence upon the merits has been interposed in the present case (Brief, p. 2), and would have this court infer that there is no such defence. The fact is that the time for interposing a defence upon the merits has not arrived. The plaintiff-in-error (defendant below) was served and sued in a jurisdiction where it was not created nor existent, and wherein it was not doing business. Pending the determination of the validity of the proceeding, it naturally has not appeared (except for the one purpose of raising the question of the court's jurisdiction), nor filed any pleadings or affidavit of defence, nor otherwise taken any action in the suit. To have done so, might have been construed as a waiver of its rights and an admission of the jurisdiction of the court in which the suit was brought.

The defendant-in-error seeks to persuade the court that the present case has already been decided upon the merits. This also is misleading. A reference to the previous proceeding between the Washington-Allexandria & Mt. Vernon Railway Co. and the Real Es-

tate Trust Co. of Phila., as reported in 177 Federal Reporter, p. 306, and 191 Federal Reporter, p. 566, will show that such proceeding was between other parties and involved only the right of the Real Estate Trust Co. to hold certain bonds, subject of course to any defences which might be alleged when suit was brought upon the bonds, while *this case* involves the *personal liability* of the Washington-Virginia Railway Company for the bonds which were the obligations of another company, merged with it by reason of such merger, which bonds have been paid in full, but which remained in existence by reason of the fraud of the President of the Real Estate Trust Company coupled with the negligence of the officers of the Washington, Alexandria and Mt. Vernon Railway Company, at a time long prior to the incorporation of the Washington-Virginia Railway Company, plaintiff-in-error.

The defendant-in-error, referring to the previous proceeding by bill in equity states that the bill was filed by "the defendant, under its previous name of 'Washington, Alexandria & Mt. Vernon Ry. Co.'" Of course, this is incorrect. The Washington, Alexandria & Mt. Vernon Ry. Co. is an entirely different corporation from the plaintiff-in-error, with different officers, directors and stockholders, and different obligations and liabilities. It is true that the present corporation arose out of a consolidation of companies, one of which was the Washington, Alexandria & Mt. Vernon Ry. Co., but it is hardly necessary to call the court's attention to the fact that such a consolidation involves considerably more than a change of name. It brings into the case new parties and new relations which are entitled to consideration at the proper time and in the proper forum, and could undoubtedly be best heard and decided in the courts of the district co-terminous with the State of

Virginia of which State the several corporations were creatures, and under the laws of which the consolidation was effected. As these questions are not before the court in the present proceeding, they need not and should not be argued here.

Certain language used in defendant-in-error's brief seems to call for a few words of explanation concerning this previous litigation, since this language, and the natural inference which it might convey, will illustrate the impropriety of bringing into the present case a reference to a previous proceeding between other parties. Thus the brief states (p. 4):

“Without rehearsing the facts as found by such Circuit Court of Appeals, the net result of the same was that the transaction, out of which grows the present suit to recover the value of such bonds, was one which was conducted by the officers and agents of the Railway Company, legally clothed by them with authority to act for the Railway Company in negotiating this loan with the Trust Company in the City of Philadelphia, and who thus, in the jurisdiction where this present suit was brought, had consummated this fraudulent transaction, leaving in what has been found to be the lawful possession of the Trust Company the aforesaid bonds of the Railway Company as the only protection for the moneys thus obtained from it.”

It would ordinarily be inferred from this language that certain resident officers and agents of the Washington-Virginia Ry. Co. (perhaps the very officers whose residence is noted in the present case) had “consummated” some “fraudulent transaction” in Philadelphia, upon the Real Estate Trust Co., which has been obliged to resort to the courts to prevent itself from being deprived of the “only protection for the moneys thus ob-

tained from it." A reference to the facts as stated in the reports already cited show a very different state of affairs. Those facts were that the president of the Real Estate Trust Co. (defendant-in-error herein), "with practically absolute control of the same both in its management and the loaning of its funds" (177 Fed., p. 308), and who, "as president, was authorized by the defendant to transact its business between the meetings of the board, and, in particular to make loans of the trust company's funds to such persons and upon such security as [he] was pleased to accept * * [and who] was trusted to the extent of absolute control over its funds to loan to whom he pleased, and his reports as to the loans he made, with the collateral, were accepted without question or examination by the board" was also the secretary and assistant treasurer of the Washington, Alexandria & Mt. Vernon Ry. Co. (not the plaintiff-in-error herein). The railway company made an issue of bonds, naming the official in question as a trustee, which issue was secured by a mortgage given to the trust company as trustee. The mortgage provided that the bonds were to be certified only at the request of the board of directors of the railway company and were to be delivered, when certified, only to the railway company. The bonds which had been certified and delivered were paid by the railway company, and the mortgage was satisfied of record by the trust company, but the president of the trust company still retained a number of the bonds which the directors of the railway company had never requested the trust company to certify. Seven years after the mortgage was satisfied, the president of the trust company, acting for the trust company and by virtue of the absolute powers allowed him by the trust company, certified these bonds (without any instruction from or

knowledge of the railway company or its board of directors), and is said to have deposited the same with the trust company as security for an alleged loan made to himself.

This was the "fraudulent transaction" referred to in the brief of defendant-in-error, and the facts have been stated not because they have anything to do with the present case, where the defendant is not the Washington, Alexandria & Mt. Vernon Ry. Co. and where the question at issue is an entirely different question, but because the plaintiff-in-error is unwilling that this court should infer that it or its officers have "consummated" any fraud upon the defendant-in-error.

The further assertion of the defendant-in-error's brief, that (p. 11):

"The transaction out of which this suit arose had been a borrowing of money from the Plaintiff Trust Company by the authorized agents of the Railway Company in the City of Philadelphia at the office of the Trust Company upon these very bonds for which this present suit has been brought, and for which sum this Judgment has been obtained."

is only another way of misstating the facts given above. There are other instances of the same sort distributed over the defendant-in-error's brief, and it only remains now to state once and for all that neither the Washington-Virginia Ry. Co. nor its officers or agents ever borrowed money from the Real Estate Trust Co. upon the bonds for which the present suit is alleged to be brought. At the date when these bonds were fraudulently certified by the president of this trust company and used as collateral for an alleged loan to himself from his trust company (which had itself as trustee satisfied the mortgage of record sev-

eral years before), the Washington-Virginia Ry. Co. was not in existence. The question of its liability and the liability of its stockholders upon the bonds of the Washington, Alexandria & Mt. Vernon Ry. Co. (which was merged with it and other lines in Sept., 1910), is one which has never come before the court, depending upon contracts and agreements made in Virginia and upon the statutes of that state, and involving questions of fact and law which do not arise here and have never been adjudicated in any proceeding.

(2) There is only one question in this case which is a question of federal law, determinable under the federal decisions; which is; Whether the Washington-Virginia Company, the plaintiff-in-error, was doing business in Pennsylvania so as to be amenable to process at the time when service was attempted.

The defendant-in-error quotes at length the opinion of Judge Thompson, and adopts the same as its statement of facts. It then proceeds to argue that the court's finding is in effect a statement of facts from which this court may determine the law. This was to some extent the view taken by the brief filed for the plaintiff-in-error (p. 11), and we have no doubt that the court below intended in effect to certify the case to this court, and, for that reason embodied in his opinion a detailed review of the facts, without, however, attempting any review of the authorities or discussion of the law. We have no particular quarrel with the statement of the facts presented by the learned court. But that statement is taken from the evidence which is a part of the record brought up on this appeal, and it is vain to contend that this court must accept as final the statement of evidence set forth in the opinion of the

district court, when the very evidence from which that statement was drawn has been brought up with the record and is properly in this court. No such proposition could be seriously entertained, and in many of the leading cases upon this very subject it will be found that this court, in rendering its opinion, has gone into many matters brought up by the record but not considered or given weight in the opinion of the lower court.

So far as facts are found by the district court we do not believe that they have been controverted or questioned by the brief of plaintiff-in-error. But so far as the inferences from facts are stated, or so far as material facts are not stated by the district court, we confidently submit that we have an undoubted right to call the attention of this court to the evidence on the record, and also that this court has an equally undoubted right to read the record which is before it and form its own conclusion as to the facts at first hand. The defendant-in-error can scarcely dispute this view of the matter, for its brief filed in this court repeatedly refers to matters not mentioned in the court's opinion, and, in fact, to matters not included in the record of the case.

In the present case, we submit that so much of the facts as are stated by the learned district judge do not establish a doing of business by the Washington-Virginia Ry. Co. in Pennsylvania so as to subject it to the jurisdiction of the District Court for the Eastern District of Pennsylvania. Our contention is that the district court has assembled a number of matters none of which constitute a doing of business within the rules laid down by the federal courts and has assumed that these facts did constitute a doing of business in Pennsylvania, and this assumption we have contended is incorrect.

There is only one question in this case, and it is a question which can only be decided under the legal precedents furnished by the United States courts. The peculiar character of institutions of this country, consisting, as it does, of a federal government and a number of sovereign states with individual governments, constitutions, laws and courts of justice, are so entirely dissimilar from those of any foreign country as to make it impracticable and dangerous to consider questions of state and federal jurisdiction arising here in the light of cases decided in the courts of England or other nations. In the present case, where there is a wealth of precedent available at home it has not occurred to us to review the English authorities, nor have we time to do so now. We can, however, very well understand that the courts of Great Britain would naturally lean to an extreme rule, in order to extend to English citizens the protection of the English courts, and prevent the necessity of their going into foreign and distant jurisdictions. But the case is not the same in this country, where all the states are under the federal government, and where federal courts are open in every state for the administration of federal laws, and where a party should only be held to answer process at his home unless he has clearly subjected himself to process in another state jurisdiction. And, we submit, that in this country the chief matter of public importance is, not to extend to a citizen the benefit of a court of his own nation, but to see to it that the old and valuable principle that a corporation exists and is suable where it is created or does its ordinary business shall not be entirely overturned by holding that the doing of business includes not only the ordinary business for which the corporation was chartered, but every kind of administrative or financial detail which is conducted else-

where in this country, for the convenience of officers or directors resident at a distance, or from the necessity of listing securities and maintaining available funds at financial centres.

The English authorities are not, therefore, it is submitted, of value in the present case. We have not instituted any search for such authorities, and the defendant-in-error's brief contains only short excerpts from opinions, which afford no definite information as to what the cases really held. There is nothing in these excerpts, however, which seems to bear upon the question in the present case. It has never been contended that a corporation must do all its business in a jurisdiction to render it liable to service and suit in such jurisdiction, and this seems to have been the question raised in most of the English cases cited. It is necessary, however, that the corporation shall have done some part of its true corporate business in the state where jurisdiction is claimed because of a doing of business there.

The chief reason why the defendant-in-error seems to be disposed to prefer the English decisions upon this subject to those of our own courts apparently lies in the use by certain of the English judges of some figurative expressions which afford a plausible ground for argument that a corporation may be sued out of its own state if its "brains," its "heart," &c., are located elsewhere. These expressions, taken out of their context, while interesting are somewhat vague. We submit that they do not offer a very practical substitute for the less fanciful but more common sense rule of the federal decisions. To locate the "brains" or the "heart" of a corporation would be to enter into a speculative field, which, however alluring, would in the end, we are convinced, lead to confusion and difficulty.

There are in this country eminent financiers who are the brains of many corporations of many states, and whose commands, written or transmitted from their distant offices, determine the policies and direct the destinies of their companies. But the courts could hardly hold that the corporations were suable at the residences of the financiers. In the present case some (not all) of the officers reside in Pennsylvania. If they met in one another's houses or in hotel lobbies and corresponded from their homes or their clubs, few persons would be so bold as to claim that the corporation was located in Philadelphia. They were obliged to open a transfer office, for the purposes of listing their stock, and that under the decisions was immaterial. Defendant-in-error's case must rest upon the fact that, obviously for their own convenience, they used desk room in the transfer office and kept there the books and papers which were in their personal custody and which were needed for reference in correspondence with the company in Virginia or Washington. There was a total lack of all the usual indicia of a corporation office. The company's name was not on the door, nor on the telephone list. The alternative was that they should abandon their Pennsylvania residences, resign their corporate offices, or carry on their necessary correspondence in their own parlors or bedrooms.

The defendant-in-error (brief, pp. 26-7) devotes some space to showing that a corporation may be sued by service on an officer or agent in a state where it is doing business notwithstanding it has designated no agent there for service of process as required by the state laws, and cites Pennsylvania state cases to that effect. This was admitted in plaintiff-in-error's brief, pp. 13-22. But it has been often held that no state

statute could confer jurisdiction over a foreign corporation unless such corporation was actually "doing business" within its limits.

The defendant-in-error calls attention to the application for listing of the stock of the Washington-Virginia Ry. Co. on the Philadelphia Stock Exchange as indicating that the company maintained an office in Philadelphia. As has often been held, the mere maintaining of an office would not preclude the matter, unless the company's true business was done therein. Nor, we conceive, would it be material, if the company had used somewhat indefinite language in describing such office, the real question being whether the true business of the company was there transacted. It is alleged that plaintiff-in-error is in some way "estopped" by the language of the application. But the chief element of an estoppel is that the person alleging it shall have been in some way misled or placed in a worse position by the act or declaration asserted to be an estoppel. A declaration made to a third person in another matter, and not shown to have been communicated to the person now setting it up until long after the transaction was completed, does not constitute an estoppel. In the present case, the application was filed on May 2, 1911, long after defendant-in-error alleges that its cause of action arose, and it is not believed, nor does the record show that defendant-in-error had any knowledge of such application until after the present suit was brought. There can, therefore, be no estoppel. The language referred to is vague at best, and, in the connection in which it was used was not misleading, for the application was filed with reference only to the listing of stocks and for the information of those dealing in the same.

So we again return to the only question in this case, which is: What is a doing of business by a cor-

poration in a state other than that of its incorporations.

We submit that the answer to this question is that the corporation must have been doing in the jurisdiction some substantial part of the business which it was chartered to do. The whole theory upon which its presence in the state is assumed for the purposes of suit, is that it has consented to be present in the jurisdiction for the purpose of being allowed to there conduct a part of its true corporate business.

We believe that the federal cases have properly restricted the meaning of the words "doing business" to the doing of the true corporate business or some part thereof. Those United States cases upon which defendant-in-error seems to rely have never extended the rule to the extreme advocated by the defendant-in-error. In *International Harvester Co. v. Ky.*, 234 U. S. 599, the Harvester Company was incorporated for the purpose of manufacturing and selling harvesting machines. That was its corporate business. The company sent agents over Kentucky who continuously solicited and in effect sold machines all over the state, and the machines so ordered were delivered in Kentucky. The court remarked that (p. 585) "the case is a close one," but, as the machines were ordered and delivered in Kentucky in pursuance of the activities of agents operating there, and as "this was a course of business, not a single transaction," it was held that the Harvester Company was doing business in Kentucky and could there be served and sued. This seems to us to be a decision strictly along the lines of our contention. The business which the Harvester Company was doing in Kentucky was its true corporate business, and for that very reason it was held amenable to process there.

In *Interstate Commerce Commission v. Texas & Pac. Ry. Co.*, 57 Fed. 948, the question presented was not whether the corporation was doing business in New York. The suit was one brought by the Interstate Commerce Commission under Section 16 of the Act to Regulate Commerce, which act provided that

“Service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office.”

The court held that this “operating office” was in New York. The facts are insufficiently stated, but it is probable that the court’s finding was in fact based on a substantial doing of business, since the defendant company was a member of the trunk lines association and its principal business was the carriage of through freight largely originating in or delivered at New York. The case was not affirmed on appeal by this court as stated in defendant-in-error’s brief (p. 32). On the contrary, it was reversed. The question of jurisdiction; however, was not considered or noticed by this court. Apparently it was not pressed. The reversal on the merits moreover rendered the question immaterial. The case did not involve the question of doing business, but was decided under the special provisions of the Act to Regulate Commerce. It may be noted, however, that no such decision could have been rendered in the case of the present corporation, which, under the Virginia statutes, is required to maintain and does maintain its principal office in the State of Virginia.

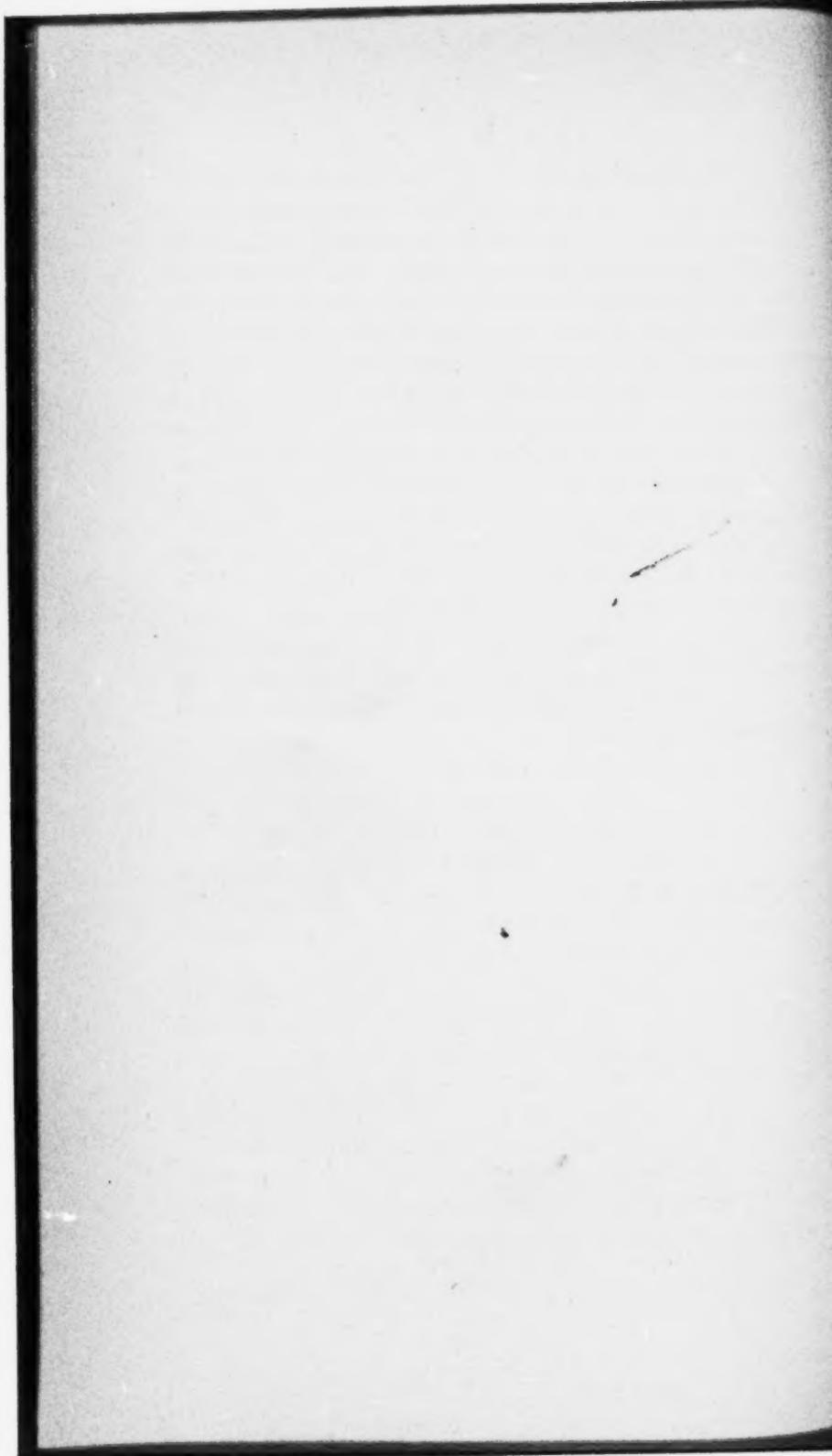
The plaintiff-in-error desires nothing in this case except that the court shall consider and determine the question of law presented on the basis of the facts, as they appear on the record. For this purpose, it is

again suggested to the court, that the statement and discussion of facts appearing in the brief of defendant-in-error should not be accepted as correct, since there are many instances of statements which are misleading and well calculated to confuse the real question involved. The question raised is one of importance to the plaintiff-in-error, and to corporations and private persons generally, and plaintiff-in-error has sought to discuss it as dispassionately and broadly as possible and to confine its discussion to the one question in issue. And upon this question it confidently submits itself to the finding of this court.

We hardly deem it necessary to deny the charge at the close of defendant-in-error's brief that there is in this case a "manifest attempt on the part of the plaintiff-in-error to delay the payment of a just debt long since adjudicated, and which it should have paid long since". The record makes it manifest that this charge cannot be sustained.

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April 20th, 1915.



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Office Attorneys Genl. & C.
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October Term, 1914.

IN THE

SUPREME COURT OF THE UNITED STATES.

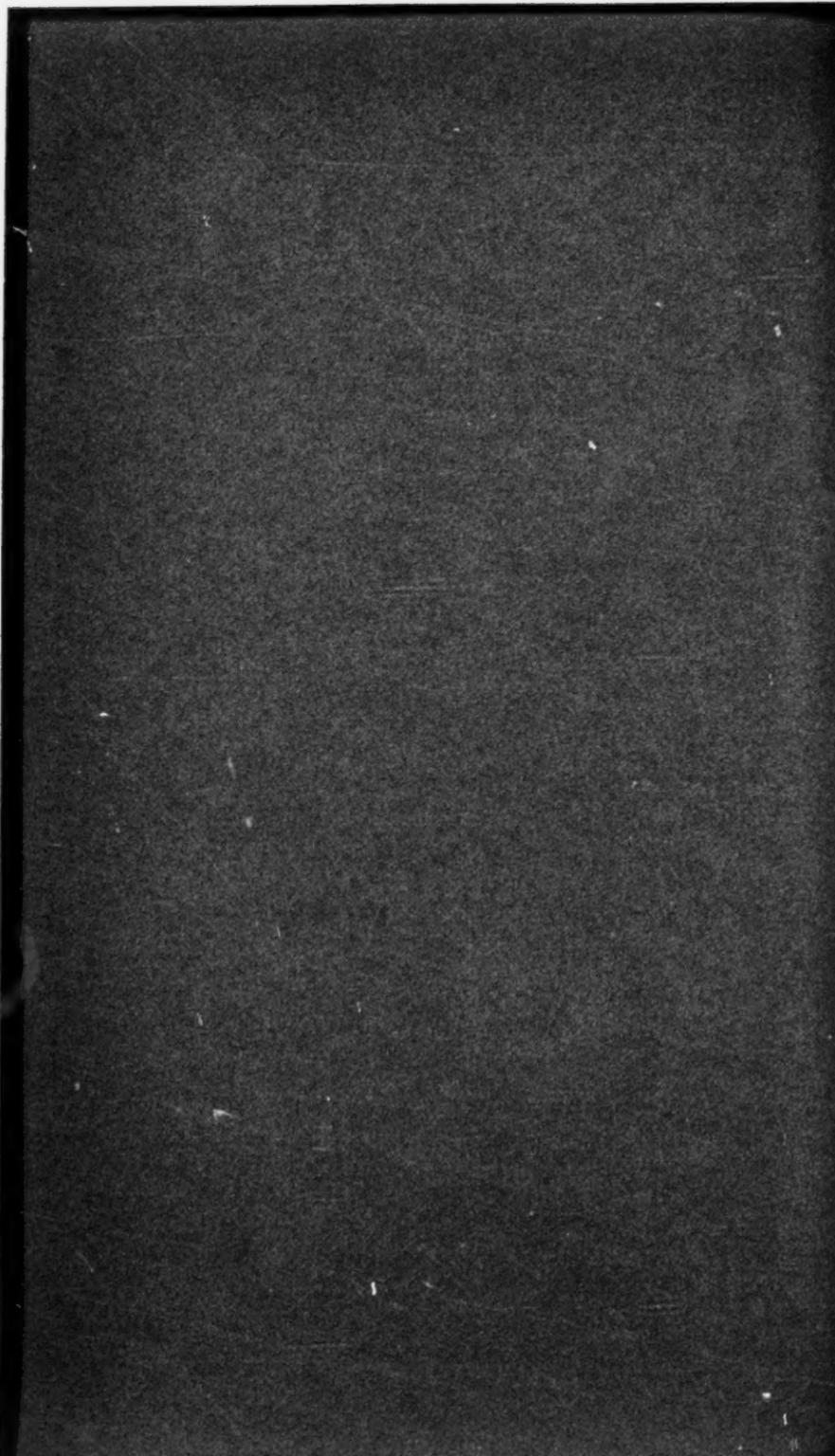
WASHINGTON-VIRGINIA RAILWAY COMPANY,
Plaintiff-in-Error,

vs.

THE REAL ESTATE TRUST COMPANY OF PHILA-
DELPHIA.

BRIEF ON BEHALF OF THE REAL ESTATE
TRUST COMPANY OF PHILADELPHIA,
DEFENDANT-IN-ERROR.

JOSEPH deF. JUNKIN,
JOHN G. JOHNSON,
For Defendant-in-Error.



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IN THE

Supreme Court of the United States.

October Term, 1914. No. 212.

WASHINGTON-VIRGINIA RAILWAY COMPANY,
Plaintiff-in-Error,
vs.

THE REAL ESTATE TRUST COMPANY OF
PHILADELPHIA,

**BRIEF ON BEHALF OF THE REAL ESTATE
TRUST COMPANY OF PHILADELPHIA,
DEFENDANT-IN-ERROR.**

I. HISTORY OF THE CAUSE.

As appears from the Transcript of Record (p. 143), this cause is at present before this Court upon the single question of jurisdiction as to whether or not the Plaintiff-in-Error (Defendant below, adopting Plaintiff-in-Error's nomenclature) was properly served with process in the Eastern District of Pennsylvania in the suit brought in the present phase of this matter.

Such Transcript of Record (p. 140) shows that The

Real Estate Trust Company of Philadelphia (Plaintiff below) brought suit in the Eastern District of Pennsylvania against Washington-Virginia Railway Company, and filed its Statement of Claim, to which the Defendant did not file any Affidavit of Defence; and on May 27th, 1913, the Court ordered judgment in favor of the Plaintiff, in accordance with the local practice, against the Defendant for want of an Affidavit of Defence in the sum of \$88,087.08, with interest from the date of judgment at six per cent. per annum until paid, and the costs of the suit.

It, therefore, appears that the Defendant interposed no defence to the merits of the claim of the Plaintiff, and that it is now before this Court praying that the judgment may be reversed solely upon this technical question.

The records of your Honorable Court itself, as reported in 223 U. S., page 724, show that a Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eastern District of Pennsylvania for the Third District in the cause entitled "Washington, Alexandria & Mt. Vernon Railway Company, Petitioner, vs. The Real Estate Trust Company of Philadelphia (No. 81)," upon October 30th, 1911, was denied by this Court.

The Transcript of Record (pp. 5-23) contains at length the statement of the Plaintiff's claim upon which the aforesaid judgment was entered against the Defendant for want of an Affidavit of Defence, and it sets forth, inter alia, that the present suit was brought to recover the amount due upon some ninety-six bonds, with their coupons, for which the Defendant was liable, as had been finally adjudicated by the Circuit Court of Appeals for the Eastern District of Pennsylvania, Third District, on Final Decree.

It was to review this Final Decree of such Circuit that the Petition for a Writ of Certiorari was filed by the Defendant under its former corporate name, and which was denied by this Court on October 30th, 1911.

The Record of this cause in the Circuit Court, which was thus brought into this Court by such Petition for Writ of Certiorari, and which Record is fully pleaded in the Statement of Claim in the present matter, discloses the fact that the Defendant, under its previous name of "Washington, Alexandria & Mt. Vernon Railway Company", had filed its Bill in Equity in such Third Circuit in April, 1907, against The Real Estate Trust Company of Philadelphia (Transcript of Record, page 6), by which, among other things, it claimed to recover possession from such Trust Company of the bonds upon which the present suit has been brought, the prayer of which Bill was granted by the Trial Judge, and such hearing and his conclusions are reported in Federal Reporter Volume 177, page 306.

Upon Appeal by The Real Estate Trust Company of Philadelphia from the Decree then entered, such Decree was reversed by the Circuit Court of Appeals of the Third Circuit, and the decision therein is reported in Vol. 191 Federal Reporter, page 566, under the title "The Real Estate Trust Company of Philadelphia vs. Washington, A. & Mt. V. Ry. Co.", decided February 21, 1911. Application was made for a rehearing in that Court, which was denied May 15th, 1911; and then the Petition for the Writ of Certiorari was taken to this Court, which was denied.

From the Findings of Buffington, Circuit Judge, in such reported cause (191 Federal Reporter, page 566), and which findings this Court in denying the Petition has refused to review, it clearly appears that

the whole transaction had its inception in the year 1895 in a money transaction between the then officers and accredited agents of the Railway Company and such Trust Company in the City of Philadelphia, in the Third Circuit, whereby such Railway Company obtained from the Trust Company a large loan upon its bonds. Without rehearsing the facts as found by such Circuit Court of Appeals, the net result of the same was that the transaction, out of which grows the present suit to recover the value of such bonds, was one which was conducted by the officers and agents of the Railway Company, legally clothed by them with authority to act for the Railway Company in negotiating this loan with the Trust Company in the City of Philadelphia, and who thus, in the jurisdiction where this present suit was brought, had consummated this fraudulent transaction, leaving in what has been found to be the lawful possession of the Trust Company the aforesaid bonds of the Railway Company as the only protection for the moneys thus obtained from it.

These record facts are called to the attention of this Court at the inception of its consideration of this present Appeal, for the reason that they clearly show, that, not only was the business transaction, as a consequence of which this suit has been brought, undertaken and consummated in the City of Philadelphia by the officers of the Defendant Company then qualified to act for it; but that also such Company, under its then name, brought suit itself in the Circuit Court of the same District to recover possession of such bonds out of the hands of the Trust Company; and also that when such claim of the present Defendant, then the Complainant, was finally adjudicated, and this Court had refused to review such Adjudication upon its Petition,

and when nothing further remained after this long litigation excepting for the Railway Company to pay the bill, which it did not do, the Trust Company was compelled to bring suit upon these adjudicated bonds to recover the amount of the same, and it caused the process to be served upon the President of the Company, whose General and Executive office had been for years in the City of Philadelphia. Defendant entered no defence to the claim on its merits, and it now seeks to attempt to have the service of the Writ set aside on the ground that it was not doing business in the City of Philadelphia, and that its President who was served was not there in his official capacity.

Eight years have passed since such Railway Company first filed its Bill, as above noted; and the Trust Company, which has been lying out of its money since 1895, although it has a judgment in its favor for the large sum of \$88,087.08, with nearly two years' interest due thereon, has not yet been able to obtain one penny of its just claim, because of this Writ of Error.

II. STATEMENT OF FACTS OF THE PRESENT CASE.

Under a rule taken by the Appellant to show cause why the service of the Writ should not be vacated, depositions were taken which are found at length in the Transcript of Record, beginning with page 25. From such depositions and the record facts above noted, Thompson, District Judge, who heard the cause, found the facts which are set forth in his Opinion with reference to this service and as to the business such Defendant was doing in the City of Philadelphia; and such facts are so clearly and succinctly found and so fully supported by the evidence that, for the conve-

nience of the Court, they will be quoted here and adopted as Defendant-in-Error's Statement of the Facts of the Case.

Thompson, J. (Transcript p. 137):

“* * * * * The evidence in this case discloses that the defendant is the successor by merger of two electric Railway Companies, one of which was the Washington, Alexandria & Mt. Vernon Railway Company, which issued bonds upon which the present suit is brought, which bonds are payable at the office of the plaintiff in the City of Philadelphia. The defendant Company operated an electric railway running from Mt. Vernon to Alexandria, in Virginia, and from that point into the City of Washington, D. C. Under the laws of Virginia, the defendant may have offices outside of the State. The Virginia office of the Company, which it is obliged to maintain by the laws of that State was at Mt. Vernon, Virginia, where there was a ticket agent upon whom service could be properly had under the Virginia statutes and where there is a room where the annual meetings of its stockholders are held. The Company also maintained a general office at Washington, D. C., where the business of conducting the physical operation of its road, through its manager, was carried on. At its Washington office were kept the cash books of the Company showing daily receipts of operation, and the collection of accounts due, its operating record, pay roll time record, a statement of claims accruing and their payment as made, a book record of car hours, mileage, etc. No books concerning the business of the Company were kept at the Mt. Vernon office. The commercial account of the Company was kept at the Commercial National Bank at Washington, D. C., and the receipts from the operation of the road were deposited and checks for operating expenses were drawn upon that bank. The Company also kept three small accounts in Alexandria, Vir-

"ginia. For some time prior to the merger, the
"Washington, Alexandria & Mt. Vernon Railway
"Company, the defendant's predecessor, main-
"tained an office at 1307-1310 Real Estate Trust
"Building, Philadelphia, which office was leased
"by Clarence P. King, who was the President of
"the Company, and subsequently became Presi-
"dent of the merged Company until he was suc-
"ceeded by Frederick H. Treat, who was Presi-
"dent of the defendant Company at the time of
"the service of the writ. The defendant Com-
"pany paid rental to Mr. King at the rate of Fifty
"Dollars per month, which covered the right of
"desk room for its president, treasurer and book-
"keeper and the use of the furniture, fixtures and
"telephone in the office. There appears to have
"been no formal authority by any action of the
"directors for maintaining any office except that
"at Mt. Vernon, Virginia, but the by-laws of the
"Company provide that its stock shall be trans-
"ferred only on the books of the Company at the
"office of its treasurer. Upon application for
"listing its stock on the Washington Stock Ex-
"change the Washington, Alexandria & Mt. Ver-
"non Railway Company, through its President, de-
"clared that 'the principal office of the Company
"is located at Mt. Vernon, Virginia, with branch
"offices in Washington and Philadelphia.' After
"the merger, the defendant applied to the Phila-
"delphia Stock Exchange for the listing of its se-
"curities and declared in its application 'Stock is
"transferred at the Company's General Office,
"1307 Real Estate Trust Building, Philadelphia,
"and registered by the Girard Trust Company,
"Philadelphia, Registrar', and declared its offices
"to be as follows:

" "Offices: Principal, Mt. Vernon, Virginia.
" "General and Transfer, 1307 Real Es-
" "tate Trust Building, Philadelphia.
" "Washington, 1202 Pennsylvania Ave-
" "nue."

"The name of the defendant Company ap-

"peared in the City Directory for the years 1911-
"1912, which was in pursuance of information ob-
"tained from the treasurer of the Company. At
"the office in Philadelphia, the corporation kept
"its regular business ledgers, its stock transfer
"books and stock ledgers. The bookkeeper of the
"Company had his desk in the office in Philadel-
"phia, made his entries in the corporation books
"kept there and conducted general correspondence
"in relation to the Company's business at that of-
"fice. The treasurer of the Company maintained
"the only treasurer's office of the Company there
"and had there his desk, papers and treasurer's
"books. The Company kept four bank accounts
"in Philadelphia in the Girard Trust Company,
"Bank of North America, Corn Exchange Bank
"and the Central Bank, into which accounts, from
"time to time, was deposited the surplus of cash
"not needed in the active operation of the Com-
"pany. Out of these accounts were paid interest
"on its mortgages, dividends, and its larger bills,
"by checks drawn at the Philadelphia office by the
"treasurer, and the deposit and check books on
"such banks were kept at the Philadelphia office.
"The president, who, under the by-laws, had cus-
"tody of the seal of the Company, kept that seal
"at the Philadelphia office. The president and
"treasurer lived in Philadelphia, and the pres-
"ident had his desk at the office 1307 Real Es-
"tate Trust Building, where he was present two
"days in each week and went to Washington once
"or twice a week. While in Philadelphia, the
"president transacted at the office such business
"of the Company as came to his attention and
"conducted the correspondence of the Company
"upon official stationery headed with the name of
"the defendant Company, the address, 1307 Real
"Estate Trust Building, and the words 'Office of
"F. H. Treat, President, Philadelphia', or 'Office
"of the President, Philadelphia.' All of the bills
"of the Company, after approval in Washington
"by the manager of the railroad, were sent to Phil-

"adelphia for examination and approval, and the
 "checks for payment were drawn at the Philadel-
 "phia Office and forwarded to the Washington
 "office. No one at the Washington office had au-
 "thority to draw checks. No money was paid
 "out at the Washington office excepting petty
 "cash for daily expenses, small bills, etc. While
 "the Company's entire physical business as a com-
 "mon carrier was transacted in the District of
 "Columbia and State of Virginia, it is apparent
 "from the above facts that it was maintaining an
 "office for the conduct of a large part of its ex-
 "ecutive, administrative and financial business in
 "this district, at which were the offices of its presi-
 "dent and treasurer as such. It is not essential,
 "to establish the presence of a corporation by the
 "doing of business within this district, that all of
 "its business should be transacted here.

"I think sufficient has been shown to establish
 "the fact that the defendant maintained an office
 "in this district at which through its president,
 "treasurer and bookkeeper, it carried on an im-
 "portant and essential part of its business in its
 "corporate capacity. The facts in this case
 "clearly distinguish it from those cases in which a
 "subordinate agent with limited authority con-
 "ducts some special business which does not in-
 "volve the exercise of corporate functions.

"The rule is therefore discharged."

In the "Statement of Facts" of the Plaintiff-in-Error, the attempt is made in several places (pages 5 and 6 of its Brief) to overcome the effect of these Findings of Fact by the Court below as to the regular business ledgers, Stock Transfer Books and Stock Ledgers, and other Treasurer's books, which were kept at the office in Philadelphia, by quoting the loose language of one of the witnesses on page 35 of the Record that such books were kept in Philadelphia "for the convenience of the President and Treasurer,"

utterly ignoring the provision of the By-Laws (Record page 90), which provides that the Treasurer "shall "keep such books as pertain to the office of Treasurer, "and also the Stock Certificate books, Stock Ledger "and Stock Transfer books, unless their custody be "otherwise assigned by the President and the Board of "Directors."

The finding of the Court below, and the evidence in the Record, show beyond contradiction that the Treasurer only had one office and was continuously at that office, which was at 1307 Real Estate Trust Building, Philadelphia, where all of the Treasurer's books were kept by him and where the entries were made by the bookkeeper of the Company, who was also continuously in such office. Of course, the books of a corporation are necessarily kept "for the convenience of the Treasurer" at the Treasurer's office, which is necessarily the office of the Company; but such statement of the proposition here does not in any way sustain the inference, drawn from the Plaintiff-in-Error's varied quotations of the suggestion of the witness, that it was merely a haphazard or irregular or non corporate transaction, which resulted in this Defendant Company keeping these books in Philadelphia. One of the manifest reasons why it maintained its General and Executive Office in Philadelphia was that its President and Treasurer both lived there at that time; but such office was not maintained there simply for their "convenience" in the ordinary use of such word. The Company had to have an Executive office somewhere, where its Officers could transact its Executive business. It did not maintain any such office in Virginia or in Washington. It and its predecessor Corporation for many years had maintained such office in Philadelphia, and from which office, as found by the learned trial Judge,

conducted, through such Officers, "a large part of its "executive, administrative and financial business."

The statement is also made on page 5 of such Brief, pages 5 and 6, that no business was transacted at such Philadelphia office with citizens of Pennsylvania.

Such statement is wholly in error. As is found by the Court below, and as is the clear fact in the Record, apart from whatever individual transactions such Executive Officers may have had with citizens of Pennsylvania in their Philadelphia office, it did from such office make the deposits of the larger amount of its cash funds in four Philadelphia banking Institutions, keeping its large and important money surpluses in such Philadelphia Banks which were all citizens of Pennsylvania, and receiving from such Banks interest on such deposits, and benefiting in the care of such deposits by the Laws of such State. Such banking business was a vital and most important part of the Defendant Company's business, and from such Banks, from time to time, as is admitted, and as is found by the Court below, the Defendant Company drew the greater portion of the funds with which it paid its indebtedness, both general bills, as well as its bond interest, and dividends.

As already noted in the History of the Cause, and as was found by the Circuit Court of the Third Circuit in its final opinion, the transaction out of which this suit arose had been a borrowing of money from the Plaintiff Trust Company by the authorized agents of the Railway Company in the City of Philadelphia at the office of the Trust Company upon these very bonds for which this present suit has been brought, and for which sum this Judgment has been obtained.

Apart, therefore, from the other considerations, this latter important portion of the Railway Company's

business was transacted with a citizen of Pennsylvania in the City of Philadelphia.

Of course, the Railway Company was not running its cars upon rails laid in the State of Pennsylvania, but the "brains" which furnished the actual moving power for the running of such cars over the rails in Virginia and the District of Columbia, were the Company's brains at the Philadelphia office.

Attention is called to the fact that no meetings of the Board of Directors were ever held in Virginia. The mass of such meetings was held at the Company's office in Washington, but admittedly such Board has met at the Philadelphia office and in Camden (Record p. 52).

Attention is also called to the fact that when the company sought to have its stock listed in the Washington Stock Exchange, there was considerable correspondence, all of which was by letters sent by the Secretary and Treasurer or addressed to them, the address being "Real Estate Trust Building, Philadelphia" (Record, pp. 106-108).

The merger agreements of the three companies were approved by the Boards of Directors of two of such companies at meetings held in **Philadelphia**. (Record p. 130).

In its argument, the Plaintiff-in>Error again endeavored to maintain the same fact that the books were kept in Philadelphia simply for the "convenience" of the President and Treasurer, and on page 69 actually states the fact to be that "these books were kept in "Philadelphia at the residence of the Treasurer, as required by the By-Laws of the Corporation;" and it attempts from this to argue that "the fact that the "Officer may have books within his place of residence, "informing him of the operations of the Company in

"other jurisdictions, would not justify the service of "process on the Company in a foreign jurisdiction."

This is evidently based upon the impossible assumption of fact that the office in Philadelphia was not the Treasurer's Office, and, therefore, not the Official office of the Company. The fact is that it is the only office which the Treasurer had, and, as before noted by the learned trial Judge, it was given out to the world as the Company's "General" office.

III. ARGUMENT.

It is respectfully submitted, that, were all of the preliminary facts heretofore noted and presented to this Court in the **History of the Cause** as taken from the Record absent therefrom, and the Court had no other facts than those contained in the findings of the Trial Judge, cumulative facts have there been found fully sustaining the jurisdiction of that Court in supporting the service of the Writ. There are a number of other minor facts not touched upon by the learned Court below which are of additional weight to the same effect. But every fact which he has found is abundantly supported by uncontradicted evidence, and can be readily verified by the reading of such testimony.

It was held by this Court in HORN vs. STATE, 143 U. S., page 305, that the question of jurisdiction depends chiefly upon questions of fact as found by the Court below in cases of this character. It has long been the fixed doctrine as laid down by this Court that findings of fact by the Court below are final and conclusive unless they are so unsupported by evidence as to be in the opinion of this Court substantially perverse or entirely without foundation.

It was said by the Court in DAVIS vs. SCHWARTZ, 155 U. S., 631:

"In neither of these cases is the finding" (i.e., the finding of the Master or Referee) "absolutely conclusive, as if there be no testimony tending to support it; but so far as it depends upon conflicting testimony, or upon the credibility of witnesses, or so far as there is any testimony consistent with the finding, it must be treated as unassailable."

In SENA vs. U. S., 189 U. S., page 233, it is said by the Court:

"A finding by the Trial Court will not be disturbed by the Court on appeal when there is any evidence to support it or the evidence tends to support it."

In DOOLEY vs. PEARSE, 180 U. S., page 126, it is said by the Court:

"The question whether a finding is against the weight of the evidence cannot be considered."

IN HOWARD vs. PERRY, 200 U. S., page 71, it is said by the Court:

"A finding of the Trial Court not materially against the weight of the evidence will not be disturbed."

See also Earle vs. Meyers, 207 U. S., 244; Swasey vs. Duss, 187 U. S., 8.

This Appellee, therefore, respectfully contends that such findings by the Trial Judge in this cause are conclusive; and that they are also fully warranted; and they are practically admitted by Plaintiff-in-Error in its Brief.

These facts are much more persuasive than those found in many of the cases in the report books, where jurisdictional facts were ascertained upholding the rights of the various States to tax foreign corporations

and enforce their process by reason of the presence of such corporation within the borders of the particular State; and the Courts have always held that the foreign corporation was present in the State for the purpose of administering justice between it and civil claimants much more readily, than for mere purposes of taxation.

The three requisites necessary to make the service of the Writ in this cause a valid service are clearly found in this Record:

1. The service was properly made in accordance with the State practice as to a Foreign Corporation.

2. The service was made upon the highest officer of the Defendant corporation present in his official capacity in the State, while engaged in the transaction of the corporate business.

3. The Defendant corporation was "doing business" in the State not only at the time when the service was made; but also the transaction itself, out of which the suit grew, was a transaction consummated in the State where the suit was brought.

I. THE SERVICE WAS PROPERLY MADE IN ACCORDANCE WITH THE STATE PRACTICE UPON A FOREIGN CORPORATION.

The Court below in its Opinion (Transcript, p. 136) says:

"Suit in assumpsit was brought by the Plaintiff, a Pennsylvania corporation, against the Defendant, a Virginia corporation. The Marshal's return of service sets forth that the writ was served on the Defendant 'at its office No. 1307 'Real Estate Trust Building, Broad and Chest-

“ ‘ ‘ ‘ nnt Streets, City of Philadelphia, by handing
 “ ‘ a true and attested copy thereof to Frederick
 “ ‘ H. Treat, President of said Company, and mak-
 “ ‘ ing known the contents of the same to him.’
 “ ‘ The manner of service as set out in the Return is
 “ ‘ therefore in accordance with the Pennsylvania
 “ ‘ Act of July 9, 1901 (P. L. 614), in that it sets out
 “ ‘ service upon the President and at the Defend-
 “ ‘ ant’s office.’ ”

The question of process as exercised in the Federal Courts has long been settled as being controlled by the statutes and practice as to process of the particular States wherein the Federal District is located.

By the Statute Law of Pennsylvania, Act of July 9, 1901 (P. L. 614), it is provided that the “Writ of Summons* * * * * may be served* * * * * upon a corporation in the County wherein it is issued “in any one of the following methods: (a) By handing “a true and attested copy thereof to the President, Sec-“retary, Treasurer, Cashier, Chief Clerk, or other Ex-“ecutive Officer, personally* * * * *; (e) by hand-“ing a true and attested copy thereof at any of its “offices, depots or places of business to its agents or “person for the time being in charge thereof* * * * *; “(g) in case of a registered foreign corporation by “serving its duly registered Attorney as in the case “of a summons issued against him personally.* * * * ”

The service made here, therefore, was strictly in accordance with the laws of the State in which this Circuit Court has jurisdiction; and it was served, as shown by the Marshal’s return, not only upon the President of the Company, but also upon the President while he was in the officially declared General Office of the Company at 1307 Real Estate Trust Building.

It was not necessary, as contended in Brief of Plaintiff-in-Error, that the Marshal’s return should

disclose any further affirmative fact. A corporation is presumed to be doing business through its President, at its office. The Marshal could not know more, and an assertion by him that the Company was "doing business" in Pennsylvania, would have been of no probative value. Technically, therefore, every requirement of the New Federal Judicial Code and of the law of Pennsylvania, with reference to the institution of the suit and the service upon the Defendant, has been complied with.

2. THE SERVICE WAS MADE UPON THE HIGHEST OFFICER OF THE CORPORATION, PRESENT IN HIS OFFICIAL CAPACITY IN THE STATE, WHILE ENGAGED IN THE TRANSACTION OF THE CORPORATE BUSINESS.

Under the decisions of this Court the service of the writ, to be sufficient to hold the corporation within the jurisdiction, must be, **first**, upon some one representing the corporation who was not merely present in the State as an individual, but present therein as an officer of the corporation transacting not merely **his** business but **its** business; **secondly**, he must be an officer who is not merely a subordinate agent, but of such a class of officer as to justify the general assumption that notice of service upon him would so reach the directing power, "the brain" of the corporation, as to give it fair opportunity of making defence.

As found by the Trial Judge, as before quoted, and as shown by the Transcript of Record, Frederick H. Treat was the duly elected President of the Defendant Company at the time of the service of the Writ. He was served at the officially declared "General" Office of the Company, 1307 Real Estate Trust Building, which it rented from a Mr. King under

a verbal Lease, giving it the right of desk room for its President, Treasurer and Bookkeeper and the use of the furniture, fixtures and telephone in the office. The Defendant corporation, listing its securities on the Philadelphia Stock Exchange, declared in its application that stock was transferred at the Company's General Office, 1307 Real Estate Trust Building, Philadelphia, and registered by the Girard Trust Company, Philadelphia, and declared its offices to be as follows:

“Offices: Principal Mt. Vernon, Virginia;
“General and Transfer, 1307 Real Estate Trust
“Building, Philadelphia.

“Washington, 1202 Pennsylvania Avenue.”

“The President, who, under the By-Laws, had
“custody of the seal of the Company, kept that seal
“at the Philadelphia office. The President and
“Treasurer lived in Philadelphia, and the Presi-
“dent had his desk at the office 1307 Real Estate
“Trust Building, where he was present two days in
“each week, and went to Washington once or
“twice a week. While in Philadelphia the Presi-
“dent transacted at the office such business of the
“Company as came to his attention, and conducted
“the correspondence of the Company upon official
“stationery headed with the name of the Defend-
“ant Company, the address 1307 Real Estate
“Trust Building, and the words ‘Office of F. H.
“Treat, President, Philadelphia,’ or ‘Office of the
“President, Philadelphia.’”

(Quotation extracted from Opinion of the
Trial Judge.)

Clearly, therefore, the first of the requisites of valid service upon a foreign corporation was fully complied with, and the duly elected Executive head of the Company was served while engaged in Company business; and secondly, by the fact that such officer did communicate the fact of the service of the Writ to his corpor-

ation, and it has appeared in the Court to attack such service.

It cannot be successfully contended for a moment that Mr. Treat fell within the description of an agent whose mere presence was upon personal affairs in the City of Philadelphia, where he was acting for himself alone and not for it.

At the time of service he was in an advertised and authorized office of the Company, for which it paid rent in the City of Philadelphia, and where he had his official desk.

To be sure, this Company did have three offices: (1) The statutory Virginia office, as required by the laws of Virginia, at Mount Vernon, where no official business was transacted; (2) the General Manager's office at Washington, from which the physical act of conducting its Railway was managed, and which office the President occasionally visited, and where sometimes its Board met; but (3) its **real office, where its brains resided, and from which its Road was conducted by its Executive Officers**, was in the City of Philadelphia, at 1307 Real Estate Trust Building.

If the contention of the Appellant is sustainable at all, it must go to the point that a corporation cannot be held to be present in any other State than that of its incorporation where its physical property exists, for purposes of service of process; and that no process can be issued against it and served upon it, so as to confer jurisdiction of the suit, unless such suit is actually brought in the State of the incorporation and served upon some officer of the corporation within that State; and that, in this case, that the physical performance of operating the portion of its actual Railway over which it runs its cars in the State of Virginia, was its **sole corporate function**.

That such a position is wholly untenable is illuminatingly shown as far back as the case of *ST. CLAIR vs. COX*, 106 U. S., 350, where Mr. Justice Field, in discussing the jurisdiction of the Federal Court, acquired by service of process on the agent of a foreign corporation, said:

“Formerly it was held that a foreign corporation could not be sued in an action for the recovery of a personal demand outside of the State by which it was chartered. * * * * * This doctrine of the exemption of a corporation from suit in a State other than that of its creation was the cause of much inconvenience, and often of manifest injustice. The great increase in the number of corporations of late years, and the immense extent of their business, only made this inconvenience and injustice more frequent and marked. Corporations now enter into all the industries of the country. The business of banking, mining, manufacturing, transportation and insurance is almost entirely carried on by them, and a large portion of the wealth of the country is in their hands. Incorporated under the laws of one State, they carry on the most extensive operations in other States. To meet and obviate this inconvenience and injustice, the Legislatures of several States interposed, and provided for service of process on officers and agents of foreign corporations doing business therein. Whilst the theoretical and legal view that the domicile of a corporation is only in the State where it is created, was admitted, it was perceived that when a foreign corporation sent its officers and agents into other States **AND OPENED OFFICES**, and carried on its business there, it was, in effect, as much represented by them there as in the State of its creation. As it was protected by the laws of those States, allowed to carry on its business within their borders, and to sue in their courts,

"it seems only right that it should be held responsible in those courts to obligations and liabilities there incurred. All that there is in the legal residence of a corporation in the State of its creation consists in the fact that by its laws the corporators are associated together and allowed to exercise as a body certain functions, with a right of succession in its members. **ITS OFFICERS AND AGENTS CONSTITUTE ALL THAT IS VISIBLE OF ITS EXISTENCE; AND THEY MAY BE AUTHORIZED TO ACT FOR IT WITHOUT, AS WELL AS WITHIN, THE STATE.** There would seem, therefore, to be no sound reason why, to the extent of their agency, they should not be equally deemed to represent it in the State for which they are respectively appointed when it is called to legal responsibility for their transactions. The case is unlike that of suits against individuals. They can act by themselves, and upon them process can be directly served; but a corporation can only act and be reached through agents. Serving process on its agents in other States, for matters within the sphere of their agency, is, in effect, serving process on it as much as if such agents resided in the State where it was created."

As shown by the Record (p. 53) and the laws of Virginia, this corporation was authorized to have offices without, as well as within, the State, and its Board of Directors was authorized to hold meetings without, as well as within, the State. The Statute of its creation, therefore, expressly contemplated, as shown by Mr. Justice Field, that it should be allowed to perform its corporate powers outside of the State of Virginia in all respects, except that of actually physically operating the portion of its railway line within such State.

Under such circumstances, can it be contended for a moment that Frederick H. Treat, who was served as

the President of this Company, and at the Company's office, as the Marshal's Return shows, 1307 Real Estate Trust Building, Broad and Chestnut Streets, Philadelphia, was there and present upon his **personal affairs**; or that he kept the seal of the corporation there for his **personal purposes**; or that the documents which he executed for the corporation, or the checks which he countersigned, or the consultations which he held on the Company's affairs in such office, were such acts that he was performing in connection with his own **personal affairs**?

Such questions in this connection answer themselves.

Admittedly, by his own evidence, he was in the Philadelphia office of the Company as its President at least two to three days of each week, occupying his official desk in the conduct of his official affairs, and it was upon one of these occasions that he was served by the Marshal with this Writ.

This precise question in this form as to the effectiveness of a service upon an Executive Officer who was specially authorized by corporate authority to maintain the Company's office elsewhere than in place of incorporation, has not been much discussed in this Court. Such matters have been often before the Courts of England, notably in the important **DeBEERS CASE**, Law Reports (1895), 2 K. B. D., 612, where Lord COLLINS, Master of the Rolls, illuminatingly says:

"The head and brains of the Company are, as
"it appears to me, to be found in London, and the
"real conduct of the adventure takes place there.
"It does not matter, in my opinion, whence the
"subject matter with which the business deals is
"drawn; the inference which I draw from the fact
"is that the real business of the Company is car-
"ried on in London."

And Lord Justice MATHEW added:

“Whenever it is found to be occupying, by
“means of its offices, premises in this country, its
 “residents here would seem to be established for
 “purposes of service.”

And Lord Justice COZENS-HARDY said (page 642):

“So far as our information goes the seal of
“the Company would appear to be kept in London
 “and to be there affixed to documents requiring to
 “be sealed by order of the Directors. In consider-
 “ing where the brain, heart and motive power of
“the Company are situated, all the important ele-
 “ments in the case appear to me to show that they
 “are to be found in London and not in Kimberley.”

In the case of HAGGIN vs. COMPTOIR d'es COMPTE DE PARIS, 23 L. R. Q. B. Div., p. 519, where the Writ was served in London upon a Manager of a branch of a Paris Bank, who had a Power of Attorney from the foreign corporation to transact specific lines of business, but not to bind the corporation in all particulars, the service of a Writ upon this Manager in London was held to be good. While the facts are not similar to those in the present cause in some particulars, the reason given as to why such service was held to be good is a very conclusive one. COTTON, L. J., says, quoting with approval BLACKBURN, J., in the case of NEWBY vs. Van OPPEN, Law Reports, 7 Q. B., 293:

“The clerk or officer must be in the nature of
 “a head officer, whose knowledge would be that of
 “the corporation.”

It is, therefore, respectfully submitted that not only was the service made strictly in accordance with the practice of the State of Pennsylvania, but that it was

also made upon the President of the corporation when he was in such State engaged in the transaction of corporate business for the corporation, and not for himself; and while he was actually in the recognized and general and only executive office of such Company, which the Company had located in such District.

**3. THE DEFENDANT CORPORATION WAS
"DOING BUSINESS" IN THE STATE, NOT ONLY
AT THE TIME WHEN THE SERVICE WAS MADE;
BUT ALSO THE TRANSACTION ITSELF, OUT OF
WHICH THE SUIT GREW, WAS A TRANSACTION
CONSUMMATED IN THE STATE WHERE THE
SUIT WAS BROUGHT.**

The trend of the decisions upon this subject, both here and abroad, as to the service made upon the President of a corporation under the circumstances as before narrated, would seem to indicate that such service would be sufficient even though the corporation were not actually "doing business" in the State where the service was made; but the evidence in this cause, and the facts as found by the Trial Judge, entirely dispose of any doubt, if any may exist, as to whether the Court below had power to entertain jurisdiction of this cause on that ground; because, beyond all peradventure, it is submitted that such facts demonstrate that this Defendant corporation was "doing business" in the State of Pennsylvania at the time of the service of the Writ upon its President. Succinctly, such facts disclose this situation:

1. The Defendant corporation had at that time, and had had for some years, under its former name, **an authorized office** at 1307 Real Estate Trust Building, Philadelphia, for which it paid rent.

2. Its President had his desk in such office as well as did its Treasurer, and both of them lived in the City of Philadelphia, and the Board of Directors had held meetings there (Record p. 52).

The President was at such office in his official capacity at least two or three times each week, and the Treasurer was there permanently excepting when he took his vacation.

The President kept the **seal** of the corporation at the office in Philadelphia, in accordance with the By-Laws which required that the President should keep the seal at his office.

The President transacted at such office, while he was in the same, such business of the Company as came to his attention, **conducted the correspondence** with reference to the same upon **official stationery** headed with the name of the Defendant Company, with the Philadelphia address and the words: "Office of F. H. "Treat, President, Philadelphia", or "Office of the "President, Philadelphia."

3. The Company kept **four Bank accounts** in four Banking institutions of the City of Philadelphia, and **all of the bills** of the Company, after approval in Washington by the Manager, were sent to Philadelphia for examination and approval, and checks in payment of the same were drawn at the Philadelphia office and forwarded to the Washington office for delivery to the payees.

4. The Treasurer kept the **official corporate account books** of the Company at such office in Philadelphia, and therein were entered what might be called the executive transactions of the Company.

The Trustees under its corporate mortgages were Pennsylvania corporations, with offices in Philadelphia,

and through them, from time to time, was paid the interest on the bonds secured by the Mortgages, the coupons being payable in Philadelphia at the respective offices of the Trustees.

5. Defendant's corporate name appeared in the **City Directory** of the City of Philadelphia as having its office at 1307 Real Estate Trust Building during the year the service was made, and such name was placed there by the direction of the Treasurer of the Company.

6. The Company officially declared to the Stock Exchange of the City of Philadelphia, seeking the registration of its securities, that the Company's **General and Transfer Office** was at 1307 Real Estate Trust Building, Philadelphia.

7. It received interest upon the large amount of its funds which it kept on deposit in its said depositories in the City of Philadelphia.

It is true that the Defendant corporation did not register under the laws of the State of Pennsylvania any agent upon whom process could be served in that State, as required by the Act of Assembly of Pennsylvania of 1874 (P. L. 108), but, as is the settled law in the State of Pennsylvania, the result of such non-registration only imposed upon such foreign corporation an inhibition from bringing suit in the State. Such neglect did not prevent the citizens of that State from sueing such corporation in that jurisdiction, if service could be made upon it within the State.

Judge Holland in *re. NAYLOR MFG. CO.*, 135 Fed. p. 208, says:

“They are therefore entitled * * * * *
“unless as is contended by the Trustee, that the
“contract of this foreign corporation is null and

"void because of their failure to register in this State in compliance with the Act of 1874. This contention, we think, cannot be permitted to prevail. The proposition that this corporation can 'take advantage of its omission to comply with the requirements of the Pennsylvania Law is against public policy, and in direct conflict with a long line of decisions to the contrary. Banks v. Columbus, 170 Pa. 1, 32 Atl. 539; Swan v. Insurance Co., 96 Pa. 37; Watertown v. Simons, 96 Pa. 520; Hegerman v. Empire Slate Co., 97 Pa. 534."

In the latter case, *HEGERMAN v. EMPIRE SLATE CO.*, 97 Pa., p. 534, is held by the Supreme Court of Pennsylvania:

"When a foreign corporation transacting business in this State has failed to establish an office and report the name of its agent to the Secretary of the Commonwealth, but has some person residing therein who acts as its agent, it must be presumed that the corporation has substituted such agent as one on whom service is authorized to be made."

Section 5 of Article XVI of the Constitution of that State provides:

"No foreign corporation shall do any business in this State without having one or more known places of business and authorized agent or agents in the same upon whom process may be served."

While the Defendant Corporation did not have an authorized agent upon whom process could be served as required by the Act of 1874 above mentioned, it clearly had a known place of business, declared to be such by its own corporate act, in the City of Philadelphia, and was, therefore, within the Constitutional provision with reference to doing business within this State. In such office it had its highest authorized offi-

cial, to wit: its President; and every ordinary business indicia relating to its occupancy of such office excepting the actual name upon the door, pointed to that place as its office in Philadelphia.

It had, in the most positive manner, declared to the citizens of that State, in its application to the Philadelphia Stock Exchange, that its General Office was at 1307 Real Estate Trust Building, and it was inducing the citizens of such State to deal with it and its securities by means of such declaration.

It is respectfully submitted that it is estopped by such declaration from now claiming that its General and Executive Office was not at such location in the City of Philadelphia.

It therefore follows that with this General and Executive Office established at this place, and its Executive Officers admittedly in occupancy of the same; and in view of the other facts before narrated, it was performing the most important part of its corporate business and functions in the City of Philadelphia at the time of service, and was, therefore, present as a corporation for purposes of service under the decisions before quoted, in every legal particular.

By reason of the foregoing facts, every requisite which has been pointed out by the decisions of this Court and of other Courts as constituting a "doing business" by the corporation in another State, has been found to be present here.

The principles governing this question are clearly enunciated in the most recent decision in this Court in the case of **INTERNATIONAL HARVESTER vs. KENTUCKY**, 234 U. S., page 579, where Mr. JUSTICE DAY says:

"For some purposes a corporation is deemed 'to be a resident of the State of its creation; but

"when a corporation of one State goes into another in order to be regarded as within the latter, it must be there by its agents authorized to transact its business in that State. The mere presence of an agent upon personal affairs does not carry the corporation into the foreign State. * * * Each case must depend upon its own facts, and their consideration must show that this essential requirement of jurisdiction has been complied with, and that the corporation is actually doing business within the State. * * * **Such corporations are within the State, receiving the protection of its laws, and may, and often do, have large properties located within the State.** * * * We are satisfied that the presence of a corporation within a State necessary to the service of process is shown when it appears that the corporation is there carrying on business in such a sense as to manifest its presence within the State."

In the cause just referred to, the facts were found By Mr. Justice Day to be as follows:

The service attempted to be upheld was in furtherance of criminal proceedings against the corporation in violation of the Anti-Trust laws of the State of Kentucky. The service was made upon an agent of the Company in such State under circumstances appearing in the Opinion. The Defendant Company had appointed Louisville as its principal place of business and had originally appointed an agent under the Kentucky statute, but whose agency had been revoked and no one had been appointed in his place; and the process had apparently been served upon a special agent of the Company, who was there with limited authority to take orders only, which were subject to the approval of a General Agent outside of the State; and all goods for which orders were obtained had to be shipped from out-

side of the State after the orders had been approved. The travelling agent did not have any authority to make any contracts in the State. He had no authority to receive any money or compromise any claims, and contracts of sale were made f. o. b. from some point outside of Kentucky. The contracts had to be made by the travelling agents as governed by the laws of the various States where the Company Defendant had General Agencies.

The agents, in short, were especially instructed that they were not to transact any business or make the Company liable for doing business in that State.

Mr. Justice Day says:

"Upon this question the case is a close one, "but upon the whole we agree with the conclusion "reached by the Court of Appeals, that the Har- "vester Company was engaged in carrying on "business in Kentucky. We place no stress upon "the fact that the Harvester Company had pre- "viously been engaged in doing business in Ken- "tucky, and had withdrawn from that State for "reasons of its own. Its motives cannot affect "the legal questions here involved. In order to "hold it responsible under the process of the State "Court, it must appear that it was carrying on "business within the State at the time of the at- "tempted service. As we have said, we think it "was. Here was a continuous course of business "in the solicitation of orders which were sent to "another State, and in response to which the ma- "chines of the Harvester Company were delivered "within the State of Kentucky. This was a course "of business, not a single transaction." * * * * "This course of conduct of authorized agents with- "in the State in our judgment constituted a doing "of business there in such wise that the Harvester "Company might be fairly said to have been there, "doing business, and amenable to the process of "the Courts of the State."

After carefully distinguishing the conclusion thus reached from that reached by the Court in GREEN vs. CHICAGO, B. & Q. R. CO., 205 U. S., page 530, and showing that in the HARVESTER CASE there was something more than mere solicitation; and refuting the proposition that where a foreign corporation does not appoint an agent in the State upon whom due process may be served, it cannot be served through an agent who is transacting Interstate business within the State, and is, therefore, immune from process under the laws of the State, he concludes as before quoted:

“We are satisfied that the presence of a corporation within a State necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the State, although the business transacted may be entirely Interstate in its character. In other words, this fact alone does not render the corporation immune from the ordinary process of the Courts of the State.”

It, therefore, appears from the facts in this present cause that every corporate power inherent in the corporation itself under the terms of its incorporation was exercised outside of the State of Virginia by its Executive Officers and Board, who could alone speak for and represent the corporation, excepting the actual operation by its subordinate employees of a portion of the railway used by it within that State; and that nearly all of such executive work was performed at the Executive Office in Philadelphia, which the Company had publicly given out as its “General Office”, and at which office the Board had held meetings. It is submitted that such facts are far stronger and more persuasive in support of the contention that the Defendant corporation was “doing business” in the State

of Pennsylvania at the time of the service than were the facts which appeared in the case of INTERNATIONAL HARVESTER vs. KENTUCKY (*supra*).

There are a number of cases which have been decided by this Court, such as the HORN SILVER MINING COMPANY vs. THE STATE OF NEW YORK, 143 U. S., 305, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS vs. ALEXANDER, 227 U. S., p. 218, where it was sought to tax the foreign corporations within the borders of the particular States, and it was held that they were within the jurisdictional power of the Federal Courts in such States.

In the case of the INTERSTATE COMMERCE COMMISSION vs. TEXAS AND PACIFIC RAILWAY COMPANY, first reported in 57 Federal Reporter, 948, and where the judgment was subsequently affirmed by this Court in 162 U. S., page 197, the facts were quite similar in some particulars to those in the present cause. The learned Court below said:

“The charter does not declare where the principal office of the Company shall be; in fact, the Stockholders’ meetings and Directors’ meetings are held in New York, where also is the office of the President, Vice-President, Secretary and Treasurer of the Company, and where the stock certificate books and records of the Stockholders’ and Directors’ meetings are kept. The New York office is thus the domicile of the corporation and the principal office, while the general or administrative offices of the heads of departments are in Texas.”

As before noted, this phase of this question has been constantly before the English Courts in its various phases, and they have cast illuminating light upon the whole subject in very emphatic language.

In DUNLOP vs. COMPANY (1902), 1 K. B. D., p. 342, COLLINS, Master of the Rolls, says:

"It appears to be suggested that the Defendants cannot be said to have carried on the business in this country because they did not carry on the whole of their business here. * * * *
 "It seems to me that it is only necessary to State that point in plain terms in order to confute it.
 "It is clearly not necessary that a Company should carry on the whole of its business in this country."

In CHAMPAGNIE vs. LAW (1899), A. C., 433, the EARL OF HALESBURY, speaking in the House of Lords, says:

"They" (the Company) "have an office, write up their name, and beyond all question stamp upon themselves and upon their place of business here the assumption that here they carry on their business. It appears to me that as a consequence of these facts the Appellants are residents here in the only sense in which a corporation can be resident, to use the phrase which Mr. Joseph Walton has so constantly referred to, they are 'here'; and if they are here, they may be served."

Lord SHAND added:

"So far as I am informed, it is sufficient for the judgment that we have the fact that this Company was carrying on its own business on its own premises, and had announced that it was carrying on business on its own premises."

The important citation from the DeBEERS case (*supra*) has already been given (pp. 22-23 of this Brief).

In GOERZ vs. BELL (1904), 2 K. B., 147, after pointing out that the executive and directing power was in London, CHANNELL, J., says:

"So far as the Company has a corporal existence other than that of the corporation by name "after its incorporation, they (the executive officers and directors) are the Company."

In SAN PAULO vs. CARTER (1896), A. C., 31, Lord HALESBURY said:

"If it were a mine or a jute mill equally with "a railroad, the person who governs the whole "commercial adventure, the person who decides "what shall be done in respect to the adventure, "what capital shall be invested in the adventure, "on what terms the adventure shall be carried on " * * * * is the person who is trading * * "so it appears to me that this Appellant Company "is carrying on the trade in London, from which "it issues its orders, and so governs and directs "the whole commercial adventure which is under "its orders."

It is respectfully submitted that all of these principles, cited from the decisions both in this country and in England, apply to the facts of this case with absolute directness. The decisions amount in fact to declaring that the corporations which does such things as the Defendant corporation did here, is estopped from declaring that it is not "doing business" in the State where it performs such functions.

Applying these principles to this case, this Defendant corporation is bound by its own act, and the situation is conclusive as against it. The facts are substantially undisputed that the highest officers, not merely the President but the Treasurer as well, authorized by the Board, publicly announced and spread broadcast the statement that the Company's General Office was in Philadelphia, where it did have an office, for which they paid rent, and from which they directed

the management of the Company; and where, as the cases put it, were the "heads and brains" of the Company; where the Directors had held meetings (Record p. 52); where the Company kept its principal Bank accounts, listed and sold its securities and kept its seal; and at which offices it executed the greater part of its most important contracts.

Defendant was liable to service in such State, not only because of the just principles of equitable estoppel, even if the facts were not as stated by it; but also they are clearly liable because such facts were truthfully stated. To assert that they were not "here" (in Pennsylvania) in the present case is equivalent to stating that white is black. To say that the continuing presence in such State of the President and Treasurer of the Defendant corporation was the "mere presence" of agents upon "personal affairs," when they took the office for their Company and not for themselves—and kept their bank accounts there gave their orders as Executive Officers there—sealed the contracts of the Company there—thought and acted for the Company there—were there as its "head and brains" in an office that they themselves announced was not only the office of the Company but its General Office, and spread this information broadcast—is such a contradiction in terms as refutes itself.

4. ANALYSIS OF DECISIONS CITED AND RELIED UPON BY PLAINTIFF-IN-ERROR.

Without even an examination of the reports of the more than sixty cases referred to by the Plaintiff-in-Error in its Brief, a reading of the various citations from such cases in such Brief, in nearly every instance, will show that they all sustain the contentions heretofore advanced on behalf of the Defendant-in-Error, both

as to the form of the service, the party upon whom this Writ was served, and as to what constitutes "doing business" in a jurisdiction foreign to the place of incorporation.

In no one of the cases relied upon by the Plaintiff-in>Error does it appear that the service was made in a foreign jurisdiction upon the President of a corporation in his official office, which had been opened in such foreign jurisdiction for the purposes of the Executive work of the corporation. In such citations, one after another, it will be seen that the Plaintiff-in>Error has wholly misconceived the true underlying principles which subject the foreign corporations to service within a given jurisdiction. In many of these decisions so cited, it is held that the corporation was "doing bus-
"iness" where "a substantial part of the regular bus-
"iness of the corporation was carried on." While the mass of them are in the lower Courts, in no one of them is it held that the Executive work of a corporation is not a "substantial" part of its business. Indeed many of them imply such conclusion. And such must be the necessary conclusion, as shown by the carefully considered decisions in the Courts of England, which have been cited to this Honorable Court.

A corporation could not exist or carry out its corporate functions without these Executive heads.

They are its very "breath of life;" and the Railway of this Defendant Company could not have been run had not these Executive Officers exercised their functions. By the Charter of the Company and the Law of the State of Virginia the Company was permitted to have its Executive Offices outside of such State. It did cause such Executive office to be located in the City of Philadelphia through its Officers, who had the right to so designate the place. The des-

ignation of this office by them was that of its "General" office. It clearly did not have an Executive office in the City of Washington. It had none in the State of Virginia, and by exclusion the office in Philadelphia was necessarily **its only executive office**. Not only a substantial, but the most important part of its real business was transacted at that office. The mere running of its cars over its railway in Virginia and in the District of Columbia would have amounted to nothing of value to the Corporation, unless the executive conduct of the same had been successfully managed. Of course, it did not sell its street railway tickets at such executive offices, nor collect the fares from the passengers, nor physically run the power house, nor perform any other physical act of that character; but to such offices did come the receipts of such operations, which were deposited and expended in the City of Philadelphia under the care and guardianship of the Laws of the State of Pennsylvania, and in which State in reality a very large portion of its corporate assets were kept and cared for by such Laws and under contracts made by such executive Officers with the Banks wherein such funds were kept.

If one of such Banks had brought a suit against the Defendant Company, surely it could not be successfully contended that the Defendant Company was not liable to such suit in that jurisdiction?

The exercise of that character of corporate functions was as clearly delegated to the Executive Officers by the Charter of this Company, as was the actual conduct of the Railway; and it was an important, if not a more important part of the Company's business, than such mere conduct of the railway. The fact is that the Company had no other office where its Executive Officers could be served; and as before noted, if the service

was not good in the City of Philadelphia upon such Executive Officers, any claimant against the Company would necessarily have been compelled to go to the State of Virginia and cause service to be made upon the registered agent at Mount Vernon.

This is the inevitable conclusion from the argument of the Plaintiff-in-Error.

It is respectfully submitted that applying these tests to such argument, and to the deductions which it has attempted to draw in its Brief from the many cases cited by it, such deductions and such cases do not only not aid the Plaintiff-in-Error, but are in very strong support of the Findings of the Court below that the service made upon the Defendant Company was valid.

In the citations from the decisions relied upon by the Plaintiff-in-Error in its Brief appear the following statements as to the law; and which, either affirmatively or negatively, are in entire support of the principles contended for by Defendant-in-Error.

ST. CLAIR vs. COX, 106 U. S., 350 (Plaintiff's Brief 14):

“Whilst the theoretical and legal view, that “the domicile of a corporation is only in the State “where it is created, was admitted, it was perceived that when a foreign corporation sent its “officers and agents into other States and opened “offices, and carried on its business there, it was, “in effect, as much represented by them there as “in the State of its creation. As it was protected “by the laws of those States, allowed to carry on “its business within their borders, and to sue in “their Courts, it seemed only right that it should “be held responsible in those Courts to obligations and liabilities there incurred.”

EX PARTE SCHOLLENBERGER, 96 U. S., 369
(Plaintiff's Brief 16):

"It may by its agents, transact business anywhere, unless prohibited by its charter or excluded by local laws. Under such circumstances, "it seems clear that it may, for the purpose of securing business, consent to be 'found' away from "home, for the purpose of suit as to matters growing out of its transactions."

SWANN vs. MUTUAL RESERVE, 100 Fed., 92
(Plaintiff's Brief 18):

"It is a general and well established rule that "an attempt to secure service upon a corporation "in a State where it does not reside or do business, "by service, even upon its President, while casually in that State, will not be valid."

UNITED STATES vs. AMERICAN BELL TELEPHONE COMPANY, 29 Fed., 17 (Plaintiff's Brief page 20):

"It must itself be carrying on business in its "own right, on its own responsibility, and for its "own account, and through or by means of its "own agents, officers or representatives, in order "to bring it within the operation of the laws of a "State other than that in which it is incorporated."

INTERNATIONAL HARVESTER vs. KENTUCKY, 223 U. S., page 579 (Plaintiff's Brief page 24):

"It must be there by its agents authorized to "transact business in that State. The mere presence of an agent upon personal affairs does not "carry the corporation into the foreign State."

EARLE vs. CHESAPEAKE, 127 Fed., 235 (Plaintiff's Brief 28):

"The corporation cannot be here for any purpose unless it is transacting the business for which it was organized. * * * * That invisible and intangible entity only exists in thought, and is regarded as present in a foreign jurisdiction only when its officers or other agents cross the line of that jurisdiction for the purpose of carrying on the corporate enterprise."

HUNTER vs. MUTUAL LIFE INSURANCE CO., 218 U. S., 573 (Plaintiff's Brief page 29):

"It is, however, contended that Defendant persisted in doing business in the State. * * * * Four instances are adduced to sustain the contention, two of which occurred in 1899 and two in 1902. * * * * Between the first two and the last two there was an interval of three years, and yet it insisted that there was such connection between them that they constituted doing business continuously in the State. * * * * They were not new business. * * * * Between doing business for such purposes and doing business generally there is quite a difference."

ST. LOUIS WIRE MILL CO. vs. HEMPHILL, 32 Fed., 802 (Plaintiff's Brief page 31):

"It is clear that if a corporation merely makes an occasional purchase of goods in a foreign State, but neither keeps an office nor maintains an agent therein for the transaction of its business, it cannot be said 'to be engaged in business in such State.' "

GOOD HOPE RY. Co. vs. RAILWAY BARB, &c. CO., 22 Fed., 635 (Plaintiff's Brief page 35):

"It had made purchases here occasionally, but it could have made them by correspondence. * * * * Instead of writing, its agent came here in person. As it has never kept an office

"here, or carried on any part of its business operations here * * * *, it was not found here "for the purpose of being sued."

MAXWELL vs. ATCHISON, &c. RY. CO., 34 Fed., 286 (Plaintiff's Brief page 48):

"If it have an office for the general transaction of its business,—the sale of its goods, if it be "a manufacturing corporation; or the making of "contracts—it would appear to be sufficient."

As already adverted to, the previous records in this cause, which are among the files of this Court in the matter of the Petition for a Writ of Allocatur, disclose that the real equities of this case were long since determined by the Circuit Court of Appeals for the Third District, whose decision was not in any way disturbed upon the application for the Certiorari.

The matter thus being *res adjudicata*, no defense was possible in the present suit, nor was any made.

In the light of the clear decision of the Trial Judge in the Court below, and the substantially undisputed facts in this phase of this case, which the Defendant's witnesses were compelled to admit, and after these long years of litigation, it is respectfully submitted that this Plaintiff-in>Error has inflicted great hardship upon the Defendant-in>Error in taking this Writ on this question of jurisdiction, where the facts and the law were so plainly against its right to sustain the same.

In conclusion, it is respectfully submitted to this Honorable Court that not only has this proceeding been unjustly vexatious to the Defendant-in>Error, but that it is neither supported by law nor precedent, and that

upon its face it is a manifest attempt on the part of the Plaintiff-in-Error to delay the payment of a just debt long since adjudicated and which it should have paid long since.

The Court is respectfully prayed to dismiss the Writ with costs.

JOSEPH DEF. JUNKIN,
JOHN G. JOHNSON,
For Defendant-in-Error.

IN THE
Supreme Court of the United States.

No. 212. Oct. Term, 1914.

WASHINGTON-VIRGINIA RY. CO.,
Plaintiff-in-Error,
vs.
THE REAL ESTATE TRUST COMPANY OF
PHILADELPHIA,
Defendant-in-Error.

REPLY OF DEFENDANT-IN-ERROR
to
REPLY BRIEF FOR PLAINTIFF-IN-ERROR.

The first proposition of the Reply Brief of Plaintiff-in-Error is:

“(1). The statements contained in Defendant-in-Error’s Brief, wherein it is represented “that the equities in the case have already been “determined and that the case is *res adjudicata* “on the merits, are incorrect and misleading.”

Under this head, the Plaintiff-in-Error asserts:

(1). It filed no Affidavit of Defense or Pleadings because, by so doing, it might have been construed as admitting the jurisdiction of the Court;

Plaintiff-in-Error

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(2). The proceedings in the Circuit Court of Appeals involved only the right of the Real Estate Trust Company to hold certain bonds; were as between it and a party other than ~~it~~; and were not, therefore, res adjudicata;

(3). The bonds in controversy remained in existence by reason of the fraud of the President of the Real Estate Trust Company coupled with the negligence of the officers of a Company prior in existence to that of the Plaintiff-in-Error, for whose proceedings the latter is not responsible.

Let us consider these propositions:

(1). Was the reason which actuated Plaintiff-in-Error, in not filing an Affidavit of Defense or Pleadings because, by so doing, it might have admitted the jurisdiction of the Court?

When the District Court held the Plaintiff-in-Error was subject to its jurisdiction, the latter was obliged to elect whether it would acquiesce in that decision and appeal solely because of lack of jurisdiction, or would contest the merits, and if judgment should be entered against it, under its exception, ultimately contest, in this Court, the jurisdictional question.

As the case had long before been decided against it upon the merits, it knew that if the District Court had jurisdiction, judgment must be inevitably entered against it.

Wisely, therefore, it determined to raise no question as to the merits, and preferred, without incurring inevitable defeat upon merits, which were non-existent, to take the chance of appealing as to the jurisdiction alone. If it succeeds, the Defendant-in-Error will be forced to seek for its remedy in the Courts of Virginia through expensive and long protracted litigation;

(2). It is difficult to see upon what the Plaintiff-in>Error rests its assertion that the judgment entered against the Washington, Alexandria & Mt. Vernon Railway Company is not, as to it, res adjudicata. It was formed by the merger of a Railway Company owning a very short line of road, with the Washington, Alexandria & Mt. Vernon Railway Company, under a law which expressly provides what is embodied in the agreement of consolidation in these words:

“And all debts, liabilities and duties of either
 “of said corporations shall thenceforth attach to
 “said Washington-Virginia Railway Company and
 “be enforced against it to the same extent as if
 “said debts, liabilities and duties had been incurred
 “or contracted by it, or, as in that case, by the
 “Statute Law of the State of Virginia provided.”

The Washington, Alexandria & Mt. Vernon Railway Company, merged under these conditions, could not escape the judgment which had been entered against it by merging with another Railway Company, and its adversary could not thus be deprived of the fruits of its victory.

(3). The Plaintiff-in>Error asserts as being misleading and as a mis-statement, the following language in our Brief (page 4, Reply Brief):

“Without rehearsing the facts as found by
 “such Circuit Court of Appeals, the net result of
 “the same was that the transaction, out of which
 “grows the present suit to recover the value of
 “such bonds, was one which was conducted by the
 “officers and agents of the Railway Company, le-
 “gally clothed by them with authority to act for
 “the Railway Company in negotiating this loan
 “with the Trust Company in the City of Philadel-
 “phia, and who thus, in the jurisdiction where this
 “present suit was brought, had consummated this

"fraudulent transaction, leaving in what has been
"found to be the lawful possession of the Trust
"Company the aforesaid bonds of the Railway
"Company as the only protection for the moneys
"thus obtained from it."

In support of its assertion to this effect, it refers to the Opinion of the late Judge Holland in 177 Federal Reporter, ignoring, however, the fact that Judge Holland's findings concerning the bonds in controversy in this suit were reversed by the Circuit Court of Appeals in the Opinion by Judge Buffington. The alleged facts which it states "in extenso" are those it finds in the reversed Opinion, not in that of the reversing Court, and this it does notwithstanding the fact that a Petition for a Certiorari was refused by this Court.

We take the liberty, therefore, in order that it may be seen how thoroughly the facts stated in the Plaintiff-in>Error's Reply Brief differ from those upon which the Judgment was finally entered, to quote at length from the Opinion of Judge Buffington, Fed. Rep. 191, p. 567:

"After argument and a careful study of all
"the proofs, we have reached the conclusion the
"court below was right in granting the relief
"prayed for as to the 50 \$1,000. bonds, but was in
"error in granting the relief prayed for as to the
"96 \$500. bonds. Turning first to the questions
"arising over the latter bonds, it seems that both
"the Railway and the Trust Company were inno-
"cent victims of the dishonesty of Hipple, and
"the case turns upon the question upon which of
"them shall the loss fall? In such case the law has
"established the broad, equitable rule that:

" 'Where one of two innocent persons
"must suffer by reason of the fraud or de-
"ceit of another, the loss should fall upon
"him by whose act or omission the wrong-
"doer has been enable to commit the fraud.'

"O'Connor v. Clark, 170 Pa., 321 32 Atl. 1030, 29 L. R. A. 607.

"And to the same effect is Pennsylvania Railroad's Appeal, 86 Pa., 84, wherein it is said:

"Where one of two parties, who are equally innocent of actual fraud, must lose, it is the suggestion of common sense, as well as equity, that the one whose misplaced confidence in an agent or attorney has been the cause of the loss shall not throw it on the other. As Judge King has well expressed this principle in *Bank of Kentucky v. Schuylkill Bank*, 1 Parsons' Equity Rep. 248: 'The true doctrine on this subject is that, where one of two innocent persons is to suffer from the tortious act of a third, he who gave the aggressor the means of doing the wrong must alone bear the consequences of the act.' "

"Now in the case before us the Trust Company, on November 20, 1902, by its check of even date for \$65,000. loaned that sum on a note of J. W. Schwartz. This was in reality a loan obtained by Hipple for himself. The Trust Company received from Hipple, as collateral therefor, inter alia, the 96 bonds here involved. All of said bonds had been paid or retired by the Railway, and were in the hands of its Trustees for cancellation. On August 24, 1895, the said two Trustees, Hipple and Schwartz, joined in an acknowledgement of satisfaction of said Mortgage, which was duly recorded. Shortly thereafter, Schwartz, one of the Trustees, who had in his possession \$152,000. of the bonds, burned them. Hipple, the other Trustee, who then had the other \$48,000. in his hands for retirement, did not destroy them, and continued to retain them from 1895 until 1902. During that period, Schwartz, his co-trustee, made no inquiry or took no steps to see that these bonds were destroyed. He says:

“ ‘I do not recall ever asking him positively and definitely whether he did or did not cancel them; but I assumed, I presume, that he would do just as I did. * * * * * “ ‘I ought to have done it, but I did not. It was simply a failure to do it.’

“ It subsequently transpired that Hipple, who was President of the Trust Company, had looted it by concealed loans, and on the discovery thereof committed suicide. From the facts in this case it is clear that while Hipple was President of the Trust Company from 1895 to 1902, his custody of the bonds in question during that time was as the agent or representative of the Railway. The latter was, through a subsidiary construction company, engaged in building a street railway in Virginia. Hipple, in addition to acting with Schwartz as Trustee in the Railway’s 1892 Mortgage, was, with Schwartz, financing the Railway to the extent of practically conducting all its financial affairs. He was a stockholder, Director, Assistant Treasurer, and Secretary of the Railway also. The 96 bonds in question had originally been pledged to the Trust Company for another loan, but this was paid. It is clear that the Trust Company was in no way responsible thereafter for these bonds. If Hipple had wrongfully used them, by pledging them to some other bank for a personal loan, it is quite clear that The Real Estate Trust Company would not have been responsible to the Railway for such wrongful act. Furthermore, it is equally clear that Hipple, in fraudulently pledging these bonds to his own trust company for his own personal account, does not charge the Trust Company with knowledge that the bonds were in effect retired and the mortgage satisfied. The principal is well established (*Lilly v. Hamilton Bank, 178 Fed. 53, 102 C. C. A. 1*) that a bank is not constructively visited with notice of fraudulent acts which its officer would not naturally disclose to

"it. Hipple, then, being the agent of the Railway
"and having these bonds in his custody, as its
"mortgage trustee, has the Railway been guilty
"of any act or omission by means whereof Hipple
"was enable to commit the fraud?

"Assuredly we think it has. He and Schwartz
"were the Trustees of the Railway's Mortgage.
"They were also Directors and officers thereof, and
"both were its financial agents in carrying on its
"affairs. They were, by virtue of their relations,
"entitled to the custody of its bonds, and when the
"Mortgage came to be satisfied it was the duty of
"the Railway's Trustees to destroy these bonds,
"and of its officers to see the Trustees performed
"their duty. Indeed, Schwartz, as shown by his
"testimony, admits he was remiss in that respect.
"He neither saw that the bonds, which he knew
"his co-trustee held, were burned or canceled, nor
"did he require any proof they had been destroyed.
"On the contrary, both he as the agent of the Com-
"pany and the Company by its other officers failed
"to take any steps to insure the retiring of the
"bonds, and permitted them for more than seven
"years to lie uncanceled in the hands of their own
"agent, Hipple, who, as we have seen, occupied
"the position of its Trustee, Secretary, Assistant
"Treasurer, and, with Schwartz, was its financial
"agent. It is therefore clear beyond question
"that the laxness and carelessness of the complain-
"ant left in the hands of Hipple a serviceable in-
"strument of fraud, and, indeed, one that to a
"man of his character was almost provocative
"thereof. The retention of those bonds by the
"Trustee was wrong, and, like all wrongs, led to
"others, and the subsequent hypothecation of them
"was a result that was likely to follow. No Trus-
"tee would have had any purpose in retaining
"them, save a sinister one, and failure by the com-
"plainant to see that the Trustees of its Mortgage
"destroyed or canceled its retired bonds was in ef-
"fect providing him with an instrument for work-

"ing fraud on others. And in this transaction the "Trust Company bore the relation of an innocent "party, for the knowledge of the fraud on the part "of Hipple, its President, is not, under the cir- "cumstances of this case, to be imputed to it. In "fraudulently negotiating the loan of November "20, 1902, with the Trust Company on the mythi- "cal paper of J. W. Schwartz, Hipple was acting "for himself, and not as agent for the Trust Com- "pany, and the fault of the complainant made that "fraud on the Trust Company possible.

"We are therefore of opinion that as to the 96 "bonds, of \$500. each, issued under the Mortgage "of July 1, 1892, the bill should have been dis- "missed by the court below."

Two lots of bonds, each a part of a separate issue of the Washington, Alexandria and Mt. Vernon Railway Company, after Hipple's suicide, were discovered to be held by The Real Estate Trust Company of Philadelphia, upon both of which lots separately loans had been made by Hipple as President of the Trust Company at different periods. The first lot consisted of 96 \$500 Bonds (\$48,000. par) out of the first authorized issue of \$200,000. of 1892 of the Railway Company's bonds. Two individuals were Trustees under the Mortgage securing these bonds, Frank K. Hipple and James W. Schwartz.

In 1895, a new bond issue was made by the Railway Company, authorized in the amount of \$750,000., of which The Real Estate Trust Company of Philadelphia was made Trustee. The second lot of bonds, which Frank K. Hipple also fraudulently used, were the last 50, \$1000 Bonds (\$50,000. par) of the \$750,000. of the new bonds.

He and Schwartz, as Trustees of the issue of 1892, had certified that all of such first issue of bonds had been called in and cancelled, and had satisfied the Mort-

gage, prior to the second issue going out. As a matter of fact, unknown to anybody, he personally retained possession of the said 96 Bonds (\$48,000. par) of such issue of 1892, which he was in duty bound to have destroyed as Trustee of the Railway Company, and some years subsequently used them fraudulently as collateral to secure a loan from The Real Estate Trust Company, in a fictitious name, and which was in reality made to himself. Many years afterwards, as President of such Real Estate Trust Company, he certified the last \$50,000. of the issue of 1895 without the knowledge of the Railway Company, or of the other officers of the Trust Company, and obtained a loan of \$45,000. from the Trust Company, of which he also received the proceeds.

After Hippie's suicide, the Railway Company filed its Bill in Equity in the Circuit Court for the Third District, praying that the Trust Company should be compelled to cancel and return both of such lots of bonds to it. The Trial Judge decided in its favor as to both lots of bonds; and using, as to the 96 Bonds of the first issue, the language quoted in the Reply Brief of the Defendant-in-Error. This decision was appealed to the Circuit Court of Appeals, which sustained the Trial Judge in his decision as to the lot of 50 Bonds (\$50,000. par), but reversed the Trial Judge as to the lot of 96 Bonds (\$48,000. par). To obtain the payment for such 96 bonds, with interest thereon, the suit now before this Court was instituted in the same Circuit, and as to the Judgment obtained from which this Writ of Error has been taken.

In the light of the facts thus determined by the Circuit Court of Appeals concerning the ninety-six \$500 bonds in controversy, it is difficult to see why the Plaintiff-in-Error, knowing that the other lot of fifty

bonds of \$1,000 each had been cancelled and surrendered, as ordered by the Circuit Court of Appeals, should use the following language on p. 5 of its Reply Brief:

“The Railway Company made an issue of “Bonds naming the official in question as a Trust-“tee, which issue was secured by a Mortgage given “to the Trust Company as Trustee. The Mort-“gage provided that the Bonds were to be certi-“fied only at the request of the Board of Directors “of the Railway Company and were to be delivered “when certified, only to the Railway Company. “The Bonds which had been certified and deliv-“ered were paid by the Railway Company and the “Mortgage was satisfied of record by the Trust “Company, but the President of the Trust Com-“pany still retained a number of the bonds, which “the Directors of the Railway Company had never “requested the Trust Company to certify. Seven “years after the Mortgage was satisfied the Pres-“ident of the Trust Company, acting for the Trust “Company, and by virtue of the absolute powers “allowed him by the Trust Company, certified “these Bonds (without any instruction from or “knowledge of the Railway Company or its Board “of Directors), and is said to have deposited the “same with the Trust Company as security upon “the alleged loan made to himself.

“This was the ‘fraudulent transaction’ re-“ferred to in the Brief of the Defendant-in-Error. “* * * * (page 6) At the date when these “Bonds were fraudulently certified by the Pres-“ident of this Trust Company and used as collat-“eral for an alleged loan to himself from the Trust “Company (which had itself as Trustee satisfied “the Mortgage of Record several years before) “the Washington-Virginia Ry. Co. was not in ex-“istence.”

The ninety-six bonds in controversy are the indebtedness of the Plaintiff-in-Error and we feel justified in

repeating our assertion that the appeal was taken solely upon the question of jurisdiction, because there were no merits upon which the Plaintiff-in-Error could rest.

The merits had been finally settled in a suit which binds the Plaintiff-in-Error.

(2.) As to the second of Plaintiff-in-Error's propositions discussed in its Reply Brief, that it was not "doing business" in Pennsylvania at the time of the service, Defendant-in-Error will not further trouble the Court. It has fully stated its position upon this question in its original Brief.

It takes pleasure in again directing the attention of this Honorable Court to the decisions of the great English Chancellors which have been cited upon such Brief, despite the statement of Plaintiff-in-Error (p. 9 of Reply) that "it has not occurred to us to review the 'English authorities, nor have we time to do so now.'" We feel assured that such authorities on the law, and their reasons, so ably and clearly stated as quoted in the original Brief, will have due consideration and weight with this Court; and, while of course not conclusive, yet when rendered in a jurisdiction where this question of service has been constantly brought to the attention of those Courts and carefully considered by them upon principles of fundamental reasoning as expressed by them, Defendant-in-Error expresses its faith that these decisions will prove of value in the consideration of this question.

We again respectfully pray that the Writ may be dismissed with costs.

JOSEPH DEF. JUNKIN,
JOHN G. JOHNSON,
for Defendant-in-Error.

WASHINGTON-VIRGINIA RAILWAY COMPANY
v. REAL ESTATE TRUST COMPANY OF PHILA-
DELPHIA.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 212. Argued April 29, 30, 1915.—Decided June 14, 1915.

Whether a corporation is doing business within a district so as to have submitted itself to the jurisdiction, and was present therein so as to warrant service of process upon it, depends in each case upon the facts proved.

In this case, while the corporation operates railways outside of Pennsylvania and has its general office and keeps one of its bank accounts outside of that State, it has an office in the Eastern District and that State, where its president and treasurer reside, and has an office and keeps bank accounts, within that District; and under all the circumstances of the case, *held* that the corporation defendant had submitted to the local jurisdiction, enjoyed the protection of the laws, and therefore service within the District on its president was sufficient to give the District Court jurisdiction.

THE facts, which involve the question of whether the plaintiff in error had been properly served with process so as to give the District Court jurisdiction of the action, are stated in the opinion.

Mr. William A. Glasgow, Jr., with whom *Mr. John S. Barbour* and *Mr. Norman Grey* were on the brief, for plaintiff in error.

Opinion of the Court.

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Mr. John G. Johnson, with whom *Mr. Joseph DeF. Junkin* was on the brief, for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

This case is here upon the single question of the jurisdiction of the United States District Court for the Eastern District of Pennsylvania to entertain the action. The suit was begun by the Real Estate Trust Company of Philadelphia, against the Washington-Virginia Railway Company, a corporation of the State of Virginia, to recover a judgment on certain bonds made by the Washington, Alexandria & Mt. Vernon Railway Company, also a Virginia corporation, payment of which, it was alleged, had been assumed by the Washington-Virginia Railway Company. The summons in the action was served upon the president of the defendant Railway Company, at its office in Philadelphia, by handing a true and attested copy of the summons to the president, at such office.

There is no question that the president was the proper officer to serve, and that he was duly served with process. The contention of the plaintiff in error is that the service is void and the court without jurisdiction because at the time of the service of process the defendant corporation was not doing business in the Eastern District of Pennsylvania, wherein service was made. As this court has had frequent occasion to say, each case of this kind must depend upon its own facts, and the question is whether the defendant corporation had submitted itself to the local jurisdiction and was present therein so as to warrant service of process upon it. See *St. Louis &c. Railway v. Alexandria*, 227 U. S. 218, and previous cases in this court cited on page 226.

The District Court found certain facts, from which it appears: The defendant is the successor to two electric railway companies, one of which was the Washington,

Alexandria & Mount Vernon Railway Company, which issued the bonds upon which the present suit was brought. The defendant company operates electric railway lines from Mount Vernon to Alexandria, in the State of Virginia, and from that city to Washington, in the District of Columbia. Under the laws of Virginia, the defendant company might have offices outside the State. The Virginia office of the company, under the laws of Virginia, must be kept in that State, and was at Mount Vernon, where there was a ticket agent, and where the annual meetings of the stockholders were held. The company maintained a general office at Washington, D. C., where the business of conducting the physical operation of the road was carried on through its manager. At the Washington office the cash books of the company were kept, showing daily receipts, collection of accounts due, operating record, pay roll, time record, and statement of claims accruing and their payment as made. No books of the company concerning its business were kept at the Mount Vernon office. The commercial account of the company was kept at the Commercial National Bank, of Washington, D. C., where the receipts from the operation of the road were deposited, and where checks for operating expenses were drawn on that bank. The company also kept three smaller accounts in Alexandria, Virginia.

For some time prior to the merger, the Washington, Alexandria & Mount Vernon Railway Company maintained an office in the Real Estate Trust Building, at Philadelphia, which office was leased by the president of that company, one Clarence P. King, who subsequently became president of the merged company and who was succeeded by Frederick H. Treat, president of the defendant company at the time of the service of this writ. The defendant company paid rental to Mr. King at the rate of fifty dollars per month, which covered the right of desk room for its president, treasurer and bookkeeper, and the

use of the furniture, fixtures and telephone in the office. No formal authority from the directors appears for maintaining any office except that at Mount Vernon, Virginia, but the by-laws of the company provide that its stock shall be transferred only on the books of the company at the office of its treasurer. Upon application for listing its stock on the Washington Stock Exchange, the Washington, Alexandria & Mount Vernon Railway Company, through its president, declared that the principal office of the company was located at Mount Vernon, Virginia, with branch offices at Washington and Philadelphia.

After the merger, the defendant applied to the Philadelphia Stock Exchange for the listing of its securities, and declared in its application "Stock is transferred at the Company's General Office, 1307 Real Estate Trust Building, Philadelphia, and registered by the Girard Trust Company, Philadelphia, Registrar," and declared its offices to be as follows:

"Offices:

"Principal, Mt. Vernon, Virginia.

"General and Transfer, 1307 Real Estate Trust Building, Philadelphia.

"Washington: 1202 Pennsylvania Avenue."

At the office in Philadelphia, the corporation kept its regular business ledgers, its stock transfer books and stock ledgers. The bookkeeper of the company had his desk in the office at Philadelphia, made his entries in the corporation books kept there, and conducted general correspondence in relation to the Company's business at that office. The treasurer of the company maintained the only treasurer's office of the company there, and had there his desk, papers, and books. The company had four bank accounts in Philadelphia, into which accounts, from time to time, was deposited the surplus of cash not needed in the active operation of the company. Out of these ac-

counts were paid interest on mortgages, dividends, and the larger bills, by checks drawn at the Philadelphia office by the treasurer, and the deposit and check books on such banks were kept at the Philadelphia office. The president kept the official seal of the company in Philadelphia. The president and treasurer lived in Philadelphia. The president had his desk at the office in the Real Estate Trust Building, where he was present two days in each week and went to Washington twice a week. While in Philadelphia, the president transacted such business of the company as came to his attention, and conducted the correspondence of the company upon official stationery, upon which appeared the address at the Real Estate Trust Building, and the words, "Office of F. H. Treat, President, Philadelphia," or, "Office of the President, Philadelphia." The bills of the company, after approval in Washington by the manager of the railway, were sent to Philadelphia for examination and approval, and the checks for payment were drawn at the Philadelphia office and forwarded to Washington. No one at the Washington office had authority to draw checks. No money was paid out at the Washington office except petty cash for daily expenses.

With this finding of facts counsel for the plaintiff in error finds little fault. The objection is rather to the inference drawn by the court below from such facts. It is urged that the keeping of the books in Philadelphia was for the convenience of the president and treasurer, but it also appears that such books were required to be kept by the by-laws of the company. Among the uncontested facts it appears that the defendant company had an office in the city of Philadelphia, where the president of the company lived upon whom service was made, and that at this office the treasurer of the company, who also lived in Philadelphia, kept its regular books, and from this office was conducted a general correspondence in relation to the business of the company. The company kept

four bank accounts in separate banks in the city of Philadelphia, where money was deposited and checked out in payment of mortgages, dividends, and the larger bills of the company. Such business of the company as required his attention at the Philadelphia office was there transacted by the president. Checks for payment of bills of the company at Washington were drawn at Philadelphia and forwarded to Washington.

We think the mere recital of these facts makes it evident that the corporation was properly served. It had submitted itself to the local jurisdiction, and there enjoyed the protection of the laws. In that jurisdiction by duly authorized agents it was at the time of service transacting an essential and material part of its business.

It follows that the judgment of the District Court, maintaining its jurisdiction, must be

Affirmed.
